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THE LEGAL STATUS OF THE NON-PUBLIC COLLEGE AND UNIVERSITY IN THE UNITED STATES.

BY- HALSTEAD, FRANCIS E.
DENVER UNIV., COLO.

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A NATIONAL SURVEY WAS CONDUCTED TO IDENTIFY THE RELATIONSHIPS OF SUBSTANTIVE (WRITTEN) AND COMMON LAW TO THE ORGANIZATION AND OPERATION OF NONPUBLIC U.S. COLLEGES AND UNIVERSITIES. A MULTIPHASED PROCEDURE WAS EMPLOYED. INITIALLY, LITERATURE WAS REVIEWED TO TRACE THE HISTORICAL-LEGAL DEVELOPMENT OF NONPUBLIC HIGHER EDUCATION IN THE UNITED STATES. THE CONSTITUTIONS AND STATUTES OF THE 50 STATES WERE SEARCHED. THE RESULTING DATA WERE COMPILED AND ANALYZED TO DETERMINE THE EXTENT TO WHICH EACH STATE MADE PROVISION FOR THE ORGANIZATION AND OPERATION OF NONPUBLIC INSTITUTIONS. FURTHER, THE CHARTERS OF A STRATIFIED SAMPLE OF NONPUBLIC INSTITUTIONS OF HIGHER LEARNING WERE COLLECTED AND ANALYZED UNDER FOUR CHRONOLOGICAL PERIODS CORRESPONDING TO DATES OF FOUNDING. THE PURPOSE OF THIS ANALYSIS WAS TO DETERMINE WHETHER THE POWERS GRANTED IN THE CHARTERS JUSTIFIED THE ASSUMPTION THAT THE STATE EXERTED INCREASED CONTROL OVER NONPUBLIC COLLEGES AND UNIVERSITIES FROM 1636 TO 1965. THE POWERS CONTAINED IN THESE CHARTERS WERE CLASSIFIED UNDER SEVERAL ACTIVITY AREAS TO SHOW THE TYPE OF POWER GRANTED TO NONPUBLIC INSTITUTIONS BY THE STATES. AS A FINAL ACTIVITY, PRINCIPLES OF COMMON LAW APPLICABLE TO NONPUBLIC HIGHER EDUCATION WERE EXAMINED BY REVIEWING AND SUMMARIZING RELEVANT COURT CASES. THE SURVEY FINDINGS OF THE LEGAL STATUS OF NONPUBLIC EDUCATION SHOWED SIGNIFICANT DIFFERENCES AMONG THE 50 STATES. (GC)

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CHAPTER I

NATURE AND SCOPE OF THE STUDY

American higher education was founded on the traditional concepts of the European culture; namely, universities and colleges were founded by religious groups for the primary purpose of perpetuating their own religious tenets.[1] The colonial colleges were patterned after the English system of higher education in which the church established the institution with the state's encouragement and support. The mutual cooperation by church and state in the development of higher education in American continued until the last quarter of the eighteenth century. A drastic decline in this church-state relationship followed the ratification of the First Amendment to the Constitution of the United States in 1791.[2] The First Amendment prohibited Congress from passing any law which would establish or favor any religion and established the principle of the separation of church and state, which has been followed by the legislatures and the courts to the present time. The church-state issue was challenged anew with the unprecedented increases in enrollment in institutions of higher learning during the 1960s. The higher education of the youth of America was considered essential to the "general welfare" and the "national security" of the United States by legislators and other governmental officials in 1965. In order to provide an opportunity for all qualified youth to attend an institution of higher learning, the federal government was faced with the necessity of providing funds to non-public colleges and universities. However, the United States Supreme Court recently accepted a case on appeal from a Maryland court which challenged the constitutionality of providing public funds to non-public colleges and universities.[3] The extent to which the federal government was permitted to aid non-public institutions of higher learning was a current issue considered important for this study.

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[1] Harry G. Good, A History of Western Education (second edition; New York: The Macmillan Company, 1962), p. 58.

[2] R. Freeman Butts and Lawrence A. Cremin, A History of Education in American Culture (New York: Holt, Rinehart and Winston, 1953), p. 264.

From the time of the founding of Harvard College in 1636 to the present, colleges and universities organized under charters as private corporations. The state delegated such corporations the authority to conduct institutions of higher learning without supervision by state authorities until the early 1800s. The right of the college to exist without interference by the state government was impinged upon by the legislatures following the Revolutionary War; however, the decision of the United States Supreme Court in the Dartmouth College case in 1819 held the corporate charter of an institution to be a contract which could not be abrogated under the provisions of the Constitution of the United States. This decision was instrumental to the continued existence of the non-public institution of higher learning in the United States and, in effect, established the existence of a dual system of higher education in America. Most state legislatures have, however, gradually exerted more extensive supervisory control over non-public institutions chartered by the state during the past several years. A study of the powers and limitations contained in the charters of a sample of institutions of higher learning from the year 1636 to 1965 was considered of value for the study.

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[3] *Horace Mann League of the United States*, *et al*. v. *Tawes*, *governor*, *et al*., Case No. 15, 850 Equity, Circuit Court for Ann Arundel County, March 11, 1965.

The decisions of the courts tend to reflect a changing society rather than maintaining the traditions of the past. The change in the concept of "charitable immunity" of non-public institutions, the question of "due process" in student dismissals, and the challenge of the concept of *in loco parentis* as a valid basis for institutional control of the discipline of students were but a few of the areas in common law held important for study as an aid to college administrators.

In 1965, some 1,100 four-year non-public colleges and universities were in operation with a total enrollment which approached close to two-million students.[4] This number represented one out of every three students enrolled in higher education in the United States. Figures of the United States Office of Education projected an enrollment increase of nearly one million students by 1974[5] and provided further indication for the need of a study of the legal status of non-public higher education in America.

Statement of the Problem

It was the purpose of the study to determine the legal status of the non-public college and university in the United States. The identification of principles of both substantive and common law governing the organization and operation of non-public institutions of higher learning was a primary objective of the study.

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[4] A. M. Mood, *Opening Fall Enrollment in Higher Education, 1965*, United States Office of Education (Washington, D.C.: United States Government Printing Office, 1966), p. 7.

[5] Kenneth A. Simon and Marie G. Fullam, *Projections of Educational Statistics to 1974-75*, United States Office of Education (Washington, D.C.: United States Government Printing Office, 1965), p. 10.

The substantive law constituted the written law of record under which non-public institutions of higher learning received the authority to exist and to operate. All substantive law was subject to legal interpretation by the courts. The sub-problems of the study related to substantive law were two in number: (1) the determination of the status of the non-public college and university in the constitutions and the statutes of the fifty states, and (2) the determination of the status of the non-public college and university explicit in the charters of these institutions.

The holdings of the courts provided the "unwritten" or common law of record pertinent to the operation of the non-public institutions of higher learning. The principles of common law developed from the established judicial decisions rendered by courts of competent jurisdiction. Such decisions served as precedents to be followed in future court actions. The sub-problems of the study which pertained to the common law were four in number: (1) the determination of the corporate rights, liabilities, and responsibilities involved in the operation of non-public institutions of higher learning; (2) the determination of rights and responsibilities of the states and municipalities in supervision and control of non-public institutions of higher learning; (3) the determination of principles of law enunciated by the courts relative to student rights, liabilities, and responsibilities involved in the operation of non-public institutions of higher learning; and (4) the determination of the extent to which the states and the federal government were permitted to supply tax aid to the non-public college and university.

Importance of the Study

The need for the study of the legal status of the non-public institution of higher learning was apparent in the current professional literature, in the increased numbers of students enrolled in such institutions, and in the increased tensions evidenced by the reports of faculty and student unrest on some of the campuses resulting in litigation in the courts.

Literature in the field. The legal aspects of higher education were treated in two major books published between 1960 and 1965. M. M. Chambers, in the Colleges and the Courts Since 1950,[6] included the significant cases litigated in the courts since 1950 for public higher education and devoted an entire chapter to problems unique to private colleges and universities. The American Council on Education published a book on college law written by Blackwell[7] for the purpose of giving the college administrator an awareness and understanding of basic law and legal concepts related to the operation of the colleges. The book was intended to assist the administrator in planning procedures for campus administration which would minimize the possibility of future litigation. There was no book devoted entirely to the legal aspects of the non-public institution of higher learning. Several articles appeared in the professional journals and the law reviews which dealt with the legal problems pertinent to higher education. In 1957, Remmlein and Ware concluded in an article pertaining to the law in higher education that "though there are several early works,..., more nearly complete, up-to-date research in college law is needed."[8]

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[6] M. M. Chambers, The Colleges and the Courts Since 1950 (Danville, Illinois: The Interstate Printers & Publishers, Inc., 1964).

[7] Thomas Edward Blackwell, College Law: A Guide for Administrators (Washington, D.C.: American Council on Education, 1961).

Enrollment in non-public higher education. An increase in enrollment of over 600,000 students in non-public institutions of higher learning from 1954 to 1964 was considered further justification for the study.[9] The opening enrollment of students attending non-public colleges and universities for the fall of 1965 was slightly less than two million. This enrollment figure represented an increase of 7.8 per cent over the opening enrollment for such students for 1964[10] and included one out of every three students attending public and non-public institutions of higher learning in the United States for the 1965-66 academic year.[11] Projected enrollment figures in 1965 indicated that attendance in non-public colleges and universities could be expected to increase by nearly one million by 1975.[12]

The implications of rapidly expanding enrollments in non-public institutions of higher learning were especially challenging to their administrators and trustees since the majority of the non-public colleges lacked the financial base for large scale expansion of facilities to meet the increasing enrollments. New sources of capital funds were deemed essential to meet the growing demands on non-public institutions of higher learning. Russell stated, "It is almost frightening to realize that in the next ten or fifteen years, colleges and universities in the United States will have need for twice the plant facilities now in use."[13] Legislators were expected to be particularly concerned over such increases of enrollment in higher education since higher education was considered to be essential to the "general welfare" of the state and the nation. A lack of sufficient public institutions of higher learning coupled with an inadequate financial base for the expansion of non-public institutions presented the legislators with a crucial question. This question was whether the state or federal government should appropriate funds to non-public institutions, particularly denominational institutions, in order to provide a higher education for all those desiring such an education. The church-state issue has been bitterly contested and the question of such appropriations to denominational institutions was expected to provide the basis for future litigation.

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[8] Madeline Remmlein and Martha Ware, "School and College Law," Encyclopedia of Educational Research, Chester W. Harris, editor (New York: The Macmillan Company, 1960), p. 1193.

[9] Simon and Fullam, op. cit.

[10] Mood, op. cit.

[11] Ibid.

[12] Simon and Fullam, loc. cit.

Implications of current issues. Some of the issues in higher education contained important legal implications for those responsible for the administration of the non-public institution of higher learning and, therefore, further justified the present study. Due to a rapidly changing society, the courts tended to render opinions reflecting such change rather than following the traditional concepts. The issues which were particularly significant for administrators of the non-public college and university were (1) the constitutionality of the state, as well as the federal government, to provide tax funds as aid to the non-public institutions of higher learning,[14] (2) the growing controversy between the faculty and administration over the question of the degree of "academic freedom" with which college teachers were to be privileged as institutional employees,[15] (3) the question of state's rights versus individual constitutional rights as exemplified in "loyalty oath" cases,[16] and (4) the movement of the state legislators and the courts to rescind the doctrine of "tort immunity," thereby holding non-public institutions liable for negligent acts where injuries ensue to private individuals.[17] The Dartmouth case[18] of 1819 laid the foundation for the extensive autonomy which has been an essential aspect of the extensive development of the non-public college and university in the United States. The autonomy of the non-public college and university was being challenged from several points; therefore, the determination of the current legal status of the non-public institution of higher learning contained in both substantive and common law in the fifty states was considered of value to administrators, trustees, and legislators.

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[13] John Dale Russell, "Dollars and Cents: Some Hard Facts," Higher Education: Some Newer Developments (New York: McGraw-Hill Book Company, 1965), p. 279.

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[14] Horace Mann League of the United States, et al. v. Tawes, governor, et al., supra. note 3.

[15] __________, "AAUP Report Finds St. John's Firings 'Grievous and Inexcusable' " American Higher Education: College and University Bulletin, 18:14, May 1, 1966.

[16] United Press International news item in The Denver Post, April 18, 1966.

[17] Chambers, Ibid., pp. 347-361.

[18] Trustees of Dartmouth College v. Woodward, 4 Wheat. 518, 4 L.Ed. 629 (1819).

Method of Procedure

The procedure employed in the study was the legal-historical method. The following three steps were utilized: (1) collection and organization of the data, (2) analyses of the data, and (3) presentation of the findings and conclusions in a final report.[19]

Collection and organization of the data. The writings of Butts, Hofstadter, Tewksbury, and others[20] were perused for purposes of tracing the historical development of the non-public college and university in America. Woodburne's Principles of College and University Administration[21] provided an orientation to the organizational structure and functions of administrative personnel in institutions of higher education.

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[19] John W. Lentz, "Basic Legal Controls of School District Organization in Colorado" (unpublished doctoral dissertation, University of Denver, Denver, 19[illegible]1), p. 21.

[20] R. Freeman Butts and Lawrence A. Cremin, A History of Education in American Culture (New York: Holt, Rinehart and Winston, 1953); Richard Hofstadter and C. DeWitt Hardy, The Development and Scope of Higher Education in the United States (New York: Columbia University Press, 1952); Richard Hofstadter and Wilson Smith (eds.), American Higher Education (Chicago: University of Chicago Press, 1961), I and II; Donald G. Tewksbury, The Founding of American Colleges and Universities Before the Civil War ([n.p.]: Archon Books, 1965).

[21] Lloyd S. Woodburne, Principles of College and University Administration (Stanford, California: Stanford University Press, 1958).

These references contributed to the necessary background data for Chapter II which treated the historical development of non-public higher education.

Current concerns of personnel in higher education were determined from articles in periodicals such as the *Journal of Higher Education*, the *Journal of College Student Personnel*, and the *A. A. U. P. Bulletin*. The *Guide to Legal Periodicals*[22] was searched for law review articles which provided a legal treatment of the topics previously gleaned from the general periodicals. The Harvard, Notre Dame, and Yale Law *Reviews* were particularly valuable for coverage of these current topics. *American Jurisprudence 2d*[23] and *Corpus Juris Secundum*[24] provided general principles of law and corresponding court cases for colleges and universities. Texts by Blackwell[25] and Chambers[26] contributed to the expansion of other pertinent areas of administrative concern which were determined significant for purposes of the present study.

The constitutions and the statutes of the fifty states which pertained to the non-public college and university were surveyed and all pertinent references were recorded. The session laws of each state were searched to assure currency in legislative action.

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[22] Mildred Russell (ed.), *The Guide to Legal Periodicals* (New York: The H. W. Wilson Company, 1965).

[23] *American Jurisprudence 2d* (San Francisco: Bancroft-Whitney Co. and New York: The Lawyers Cooperative Publishing Co.), Cumulative supplements to date.

[24] *Corpus Juris Secundum* (Brooklyn: The American Law Book Company and The West Publishing Company), Cumulative supplements to date.

[25] Blackwell, *loc. cit.*

[26] Chambers, *loc. cit.*

The charters of a stratified sample of non-public colleges and universities were collected. It was determined that non-public institutions would be stratified according to four chronological periods of history relative to the development of higher education in the United States. The historical periods were four in number: (1) the colonial period through the Civil War, 1636-1865; (2) the post Civil War period through World War I, 1866-1918; (3) the post World War I period through World War II, 1919-1945; and (4) the period 1946 to June, 1965. A list of all institutions in operation as of the spring of 1965 including their founding dates was selected.[27] Data for non-public colleges and universities, except proprietary and junior colleges, were placed on data processing cards. The institutions were then sorted into one of the four chronological periods of historical development according to their dates of founding. A 5 per cent sample of the charters and amendments of the institutions from each of the four periods established above was made for the purpose of determining the specific legal rights and responsibilities granted to non-public institutions of higher learning. It was also a purpose to determine whether non-public institutions chartered during particular chronological periods were granted greater or lesser rights which were not subject to the reserve power of the state issuing the charter.

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[27] United States Office of Education, "Education: American Colleges and Universities," The World Almanac and Book of Facts, 1966, Leeman H. Long (ed.) (New York: New York World-Telegram and The Sun, 1966), pp. 705-718.

The legal cases cited in the general background reading were located in the appropriate unit of the National Reporter System.[28] Citations to additional cases of significance to the problem were recorded. The American Digest System[29] was used to locate additional cases pertinent to the problem of the study through the key number and topic references recorded from cases briefed in the Reporter Systems. The legal meaning of terms encountered in the opinions of the court and other legal references were defined according to Words and Phrases[30] and Black's Law Dictionary.[31]

Analyses of data collected. Analyses were made of the cases briefed utilizing the sub-problems determined in the study. Cases used in the final report of the study were shephardized[32] to determine their most current status.

The charters from the stratified sample of non-public institutions were searched to determine the specific rights and privileges which were granted by the state legislature or other delegated legal authority. Comparison was made between methods of incorporating non-public institutions and basic rights granted to such institutions during the four periods of history established previously.

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[28] National Reporter System (St. Paul, Minn.: West Publishing Co., continuous to date).

[29] American Digest System (St. Paul, Minn.: West Publishing Co., continuous to date).

[30] Words and Phrases (St. Paul, Minn.: West Publishing Co., cumulative to date).

[31] Henry Campbell Black, Black's Law Dictionary (fourth edition; St. Paul, Minn.: West Publishing Co., 1951).

[32] Shepardizing: A method of tracing the complete judicial history and interpretation of every case, statute, or constitutional article through the use of Shephard's Citations to Cases and Shephard's Citations to Statutes.

Delimitations of the Study

The study was limited to the legal status of the non-public college and university prior to January 1, 1966.

The study was limited to the law of record on January 1, 1966.

Only the non-public college and university which offered as a minimal program the bachelor's or higher degree was included in the study. The junior college was specifically excluded from this study since it had previously been researched.[33]

The unique aspects of the court records were not considered of significance for the study; however, the generalizations made by the courts were recorded for their general applicability to the non-public colleges and universities.

Definitions of Terms Used

Status. Status was determined to be the legal relation in which the non-public college and university stands to the rest of the community.[34]

Legal right. A legal right was defined as a right existing as a result of contract and rights created or recognized by law.[35]

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[33] Edward Gacek, "Private Junior College Legislation in the United States" (unpublished doctoral dissertation, University of Connecticut, Storrs, Connecticut, 1958).

[34] Words and Phrases (St. Paul: West Publishing Co., cumulative to date), p. 128.

[35] Black, op. cit., p. 1042.

Legal liability. A legal liability in this study was a liability which the courts recognize and enforce as between parties litigant.[36]

Substantive law. The law contained in the constitutions, statutes, and charters constituted the substantive law.

Non-public college or university. An institution of higher learning offering a minimum of four-year program leading to a bachelor's degree or its equivalent and whose institution's property was not owned by any governmental unit was considered a non-public institution of higher learning for purposes of this study.

Denominational institution. An institution was classified as denominational when primarily supported and controlled by a religious group.

Charitable corporation. A college or university incorporated not-for-profit is considered a "charitable corporation."[37]

Organization of the Study

The report of the study was divided into six chapters. The nature and the scope of the study was presented in Chapter I. It included the statement of the problem, the importance of the study, the method of procedure, the delimitations of the study, the definition of terms, and the organization of the study.

Chapter II contained an historical review of non-public institutions of higher learning and a resume of selected studies related to the central purposes of the study.

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[36] Ibid., p. 1040.

[37] Trustees of Iowa College v. Baillie, 17 N. W. 2d 143, 147, 236 Iowa 235 (1945).

Chapter III contained a report of the substantive law as determined in the constitutions and the statutes of each of the fifty states pertaining to non-public colleges and universities.

Chapter IV contained an analysis of the charters of a stratified sample of non-public colleges and universities as they related to the operation of these institutions.

Chapter V consisted of a discussion of the court decisions related to (a) the corporate rights, liabilities, and responsibilities involved in the operation of the non-public college and university, (b) the student rights, liabilities, and responsibilities involved in the operation of non-public institutions of higher learning, (c) the rights and responsibilities of the states and municipalities in the supervision and control of non-public institutions of higher learning, (d) the extent to which the state and federal government had been allowed to supply tax aid to the non-public college and university, and (e) a summary of the general principles of common law pertinent to non-public institutions of higher education.

Chapter VI contained the conclusions and recommendations of the study.

CHAPTER II

HISTORICAL REVIEW AND REVIEW OF SELECTED LITERATURE

This chapter had two purposes which were pertinent to the current study. First, the chapter was designed to trace the historical development of the non-public college and university in the United States from 1636 to 1965. Historical factors from European history which were pertinent to the development of non-public institutions of higher learning were also included. The second purpose of the chapter was to report the significant literature related to the legal aspects of non-public institutions of higher learning contained in doctoral dissertations, books, periodicals, and other references.

I. THE HISTORICAL REVIEW

Non-public higher education had its beginning in the United States with the establishment of the first college in America in 1636. The Massachusetts legislature was the first to set aside an appropriation of funds for the establishment of a school or college. Two years later, the Reverend John Harvard bequeathed his library and a substantial sum of money to the perpetuation of a college for the purpose of training young men to become ministers in the Puritan church.[1] The joint effort of the government and private interests launched this first college which was named Harvard College. Harvard College has continued as one of the leading institutions of higher learning in the United States. The founding of eight additional colleges in the colonies prior to the Revolutionary War were all established as non-public colleges. At the time of this study, non-public institutions of higher learning represented 75 per cent of all the colleges and universities located in the United States and have continued as a significant force in American higher education.[2] The pertinent historical factors related to this development were reported in this chapter.

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[1] Adolph E. Meyer, An Educational History of the Western World (New York: McGraw-Hill Book Company, 1965), p. 187.

All of the nine colleges founded during the colonial period of American history received appropriations of funds from the legislatures. During the early nineteenth century, the separation of church and state became an important factor to non-public colleges since most of the states enacted legislation which prohibited the appropriation of funds to non-public institutions. Such legislation was an outgrowth of the development of the concept of the "common school" which had gradually spread throughout the states. The concept of the "common school" shifted the responsibility of providing an education for the youth from the private efforts of the church and home to the public efforts of the state through the use of tax monies. The public support of non-public institutions was no longer considered appropriate to meet the goals and the needs of the majority of the people. The rise of the state university was also a factor in ceasing public support of non-public higher education. There were several exceptions to the restrictions placed upon such appropriations by the state. Dartmouth College received state funds as late as 1920.[3] The states of Maryland, Pennsylvania, Delaware, and Florida appropriated such funds in 1965 to non-public institutions of higher learning.

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[2] United States Office of Education, Education Directory: 1964-65, Part 3, Higher Education (Washington: United States Government Printing Office, 1965), pp. 11-12.

The passage of the Higher Facilities Act of 1963 and the Higher Education Act of 1965 by the Congress of the United States provided non-public institutions of higher learning with much needed financial aid. The acts provided for the appropriation of funds to denominational institutions if not used for sectarian instruction or religious worship. The constitutionality of such appropriations was questioned since the First Amendment of the Constitution prohibited such appropriations to denominational institutions. In 1965, the United States Supreme Court accepted the case of the *Horace Mann League, et al. v. Tawes, et al.*[4] on appeal from the circuit court of Ann Arundel county in the state of Maryland. The purpose of the appeal by the Horace Mann League, a national organization of educators, was to have the United States Supreme Court make a determination of the constitutionality of providing public funds to denominational institutions of higher learning. Both state and federal aid to non-public institutions of higher learning could be affected by such decision. The ideological differences which existed between proponents of non-public and public education today were, therefore, similar to those differences professed over one hundred years ago. What was the historical background of non-public higher education which was reflected in the substantive and the common law of 1965?

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[3] Edward C. Elliott and M. M. Chambers, *The College and the Courts: Judicial Decisions Regarding Institutions of Higher Education in the United States* (Boston: D. B. Updike, The Merrymount Press, 1936), p. 289.

[4] *Horace Mann League of the United States, et al. v. Tawes, et al.*, Case No. 15, 850 Equity, Circuit Court for Ann Arundel County, March 11, 1965.

Ancient-Medieval Period

The colleges founded in America prior to 1775 reflected the influences of the traditions developed in the institutions of higher learning in many of the European countries from the time of the early Greek civilization. Many of these same influences were a part of the higher education system, both public and private, in the year 1965.

Ancient influences. Good pointed out in the History of Western Education that higher education in ancient Athens was wholly a private venture. The state provided no support; for despite the political democracy which existed, the tone of the intellectual life was set by a social aristocracy. Plato first organized higher instruction at a fixed place called the Academy which he founded in a grove on his own grounds in 387 B.C. Being a wealthy aristocrat, Plato did not accept any fees.[5] Over two thousand years later, Thomas Jefferson and others were advocating, with little success, a "free" state university which was to complete the system of common schools for the people of Virginia.[6]

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[5] Harry G. Good, A History of Western Education (second edition; New York: The Macmillan Company, 1960), p. 32.

[6] Richard Hofstadter and Wilson Smith (eds.), American Higher Education (Chicago: The University of Chicago Press, 1961), I, p. 175.

Plato's influence was reflected in the close adherence of the colonial colleges to the classical curricula. This narrow view of education, according to Good, prevented the spread of higher education in America during the early development of the country since it failed to meet the needs of a majority of the students.[7] Many aspects of the classical curricula of Plato remained in effect in a number of non-public institutions of learning during the mid-twentieth century.

Medieval influences. Atkinson and Maleska reported that "teachers and students came together informally to pursue their common interests, and eventually found it desirable to adopt the legal form of 'universitas,' liberally translated as 'corporation'."[8] This action made it necessary for the universities to secure a charter from either the church or the state since both were active in fostering higher education during the medieval period. Eighty European universities were granted charters between the twelfth and the fifteenth centuries.[9] The universities of Bologna, Paris, and Oxford were referred to as "mother" universities because they provided the models for later incorporation. The sum operation of any non-public institution was linked directly to the provisions contained in its charter.[10] The charter became a significant legal document to non-public institutions of higher learning in the United States. The decision of the

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[7] Good, op. cit., p. 100.

[8] Carroll Atkinson and Eugene T. Maleska, The Story of Education (Philadelphia: Chilton Book Company, 1962), p. 120.

[9] Good, op. cit., p. 101.

[10] Ibid., p. 102.

United States Supreme Court in the famous Dartmouth case of 1819 was based upon the legal interpretation of the rights of an institution contained in its charter.

The charter of the University of Paris was most significant to American higher education since it placed the governing power of the institution in the hands of the faculty. In contrast, the charters issued in Southern Europe placed the governing power of the institution in the hands of the students.[11] The policy of faculty control was maintained in the United States since the time of the founding of the first colleges in America. The right of self-government was the most important power granted by the charters to non-public institutions of higher learning. The charters of non-public institutions have provided such institutions with a degree of immunity from many of the state and federal laws.[12] Non-public institutions, for example, have not been generally held applicable to the provisions of the "due process clause" of the Fourteenth Amendment to the United States Constitution in regard to discriminatory practices relative to student admissions. The corporate charter formed the legal basis for the operation of non-public institutions of higher learning in the United States in 1965.

The Colonial Period: (1636-1775)

The nine colleges established in America were non-public colleges founded by the various religious groups in the colonies.

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[11] Ibid.

[12] M. M. Chambers, The Colleges and the Courts Since 1950 (Danville, Illinois: The Interstate Printers and Publishers, 1964), p. 169.

Harvard, William and Mary, and Yale, however, were founded in conjunction with the state. The most prominent characteristic of these early colleges was the predominance of the religious purpose in the instruction which persisted well into the nineteenth century. The early existence of these colleges was linked directly to the desire of the various religious groups to insure a supply of learned ministers for service in the church and state.

The establishment of the non-public colleges in the colonies followed no particular geographic pattern. Four of the colleges were established in the New England region, namely Harvard (1636), Yale (1701), Dartmouth (1769), and Brown (1764). Four such institutions were founded in the middle colonies. These institutions were the College of New Jersey, now Princeton (1746); King's College, now Columbia (1754); the College of Philadelphia, now the University of Pennsylvania (1753); and Queen's College, now Rutgers (1766). The College of William and Mary (1693) was the second colonial college founded, and it was the only college founded in the southern colonies during this period.[13] These early colleges remained among the nation's leading institutions of higher learning in the mid-twentieth century, and only one, Rutgers, became a public institution.

Student control. Residence halls for students were founded in Europe during the middle ages when the universities began to take form. The residents of the halls formed organized bodies with laws, property, officers, and corporate rights and powers. The Roman word for such a body was "collegium," which became the root of the English word "college." The professors, officials, and students were expected to lead a communal or collegiate life which included eating at a communal table, lodging in college buildings, and conforming to college rules and regulations.[14] Early accounts of colonial colleges indicated that there were usually tutors, students, and a president living in one building which constituted the college facility. Harvard College was an excellent example of the application of the European tradition.

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[13] Ellwood Cubberley, Public Education in the United States (Boston: Houghton Mifflin Company, 1934), pp. 264-265.

Butts and Cremin reported that students at Harvard in mid-seventeenth century were required to attend classes six days a week and then were to attend long church services on Sunday. The heavy schedule left little time for physical exercise or recreation; however, [illegible] riots, fights, brawls, and gambling were reported. Severe fines and public whippings were the forms of punishment exerted by the college officials.[15] The problem of riots and the proper disciplinary action to be taken, if any, were still problems of officials on college campuses during the mid-twentieth century.

Academic freedom. The question of academic freedom was debated during the colonial period. Any divergent thinking from the religious orthodoxy on the part of faculty during the colonial era was viewed as grounds for dismissal since the influence of a professor on the student was considered of high moral consequence. It was felt that a gain had been made for academic freedom at Harvard in the eighteenth century when the board of overseers overlooked the theological position of John Winthrop upon his appointment as Hollis Professor of Mathematics and Natural Philosophy. President Clap of Yale had argued that religion would benefit if the faculty and the College supervised themselves rather than to submit to the supervision of the legislature. Most legislatures, however, retained the authority to assure themselves of the political loyalty of the teachers.[16] The authority exerted by several state legislatures still provided for loyalty oaths for professors in 1965.

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[14] Good, *op. cit.*, p. 58.

[15] R. Freeman Butts and Lawrence A. Cremin, *A History of Education in American Culture* (New York: Holt, Rinehart, and Winston, 1953), p. 128.

Loyalty oaths. The signing of "loyalty oaths" dated back to the Revolutionary War period. Teachers and other public officials were required to be loyal to England and to take oaths of allegiance to the crown prior to the Revolution. When the Revolution broke out, the colonial General Assemblies quickly passed laws which required teachers to sign oaths of allegiance to the states. Massachusetts, New Jersey, and Pennsylvania passed such legislative acts between 1776 and 1778. The early purpose of loyalty oath signing was to "weed out" those teachers who were loyal to Britain. "Teachers were thus forced by law to subscribe to the principles of the Revolution, an interesting forecast of later attempts to require teachers to take loyalty oaths to constituted governments."[17] The loyalty oath law in Pennsylvania was protested by a group of Quakers at a meeting in

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[16] Butts and Cremin, op. cit., pp. 131-132.

[17] Ibid.

Philadelphia in 1779 which was influential enough to bring about the revocation of a fine imposed on a Quaker schoolmaster for failing to sign the required oath. The refusal of the schoolmaster to sign the oath was based on his conscientious objection to war and to oaths.[18] The controversy over required signing of loyalty oaths remained an issue during the mid-twentieth century.

The National Period: (1776-1865)

The nine original colleges suffered severe setbacks during the Revolutionary War. Some were occupied by troops or turned into hospitals. As a result, the college faculty and students fled to various places throughout the colonies. Following the war, the financial struggle became even more severe for these non-public institutions. Colonial colleges, even though chartered as private corporations, frequently received public aid in the form of money or land. Such an investment of public funds by the state was understood to impose a responsibility; however, the nature and limits of this responsibility were not clear.[19] A lack of clarity regarding the relationship between government and higher education remained a major current issue in the 1960s as well. Despite the financial problems imposed by the Revolution, Cubberley reported the founding of fifteen additional colleges by 1800 and fourteen more by 1820.[20]

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[18] Ibid.

[19] Good, op. cit., p. 440.

[20] Cubberley, op. cit., p. 114.

It was during the period following the Revolution that the states attempted to assume control of several of the original colleges as a means of bringing them into closer harmony with the needs of the people and the government of the state. King's College, re-christened Columbia, was placed under the control of the educational governing body of the state for a short time. Massachusetts attempted to encroach upon Harvard, but Harvard gave up all connections with the state by 1865. Similar attempts were made at the College of Philadelphia (University of Pennsylvania) and Princeton, but the institutions were soon returned to their prior non-public status. Unsuccessful attempts were also made to make state universities of Dartmouth and William and Mary.[21]

Dartmouth decision. The last attempt to secure private colleges for the purpose of transforming them into state universities occurred at Dartmouth College in the state of New Hampshire in 1819. This case was considered a landmark in the determination of whether non-public institutions of higher learning would continue their independent existence in the United States. This issue came to a head when the legislature of New Hampshire, through legislative enactment in 1816, changed the composition of the Board of Trustees and the name and purpose of the College without the consent of such Board. The case reached the United States Supreme Court, and the opinion was handed down by Chief Justice John Marshall. The opinion of the court was that the charter granted for Dartmouth College in 1769 by King George

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[21] Ibid.

III of England was valid since the legislature of New Hampshire had accepted it at the time the institution was chartered. Since the charter was a contract and since the United States Constitution forbids the states to pass any law impairing the obligation of contracts, the 1816 act of New Hampshire was declared unconstitutional by the Supreme Court of the United States.[22] Cubberley pointed out the significance of this decision.

> It would be hard to overestimate the importance of the Dartmouth College decision. Chancellor Kent, writing with reference to it in his Commentaries, said: "It did more than any single act proceeding from the authority of the United States to throw an impregnable barrier around all rights and franchises derived from the grant of government, and to give solidity and inviolability to the literary, charitable, religious, and commercial institutions of the country.[23]

Rise of new colleges. In light of the Dartmouth decision, the public authorities took steps to establish their own state universities in order to complete the common school system open to all young people in America as envisioned by Thomas Jefferson. Twenty-one public universities were founded prior to the Civil War;[24] however, an extensive denominational effort to establish additional colleges raised the total of "permanent" non-public institutions of higher learning to 161 by 1865. The high mortality rate of early colleges was reported by

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[22] Edward C. Elliott and M. M. Chambers, Charters and Basic Laws of Selected American Universities and Colleges (New York City: The Carnegie Foundation for the Advancement of Teaching, 1934), p. 6; Richard Hofstadter and Wilson Smith (ed.), American Higher Education (Chicago: University of Chicago Press, 1961), I, pp. 202-219.

[23] Cubberley, op. cit., p. 272.

[24] Butts and Cremin, op. cit., p. 265.

Tewksbury in a study of sixteen of the states in existence prior to the Civil War. According to this research, a total of 516 colleges were actually founded prior to 1865 in the sixteen states, but 81 per cent of these institutions ceased existence by 1927.[25] It was little wonder that the state authorities felt compelled to establish state universities as a means of insuring a degree of permanency in the preparation of the young people of America for an educated citizenry.

Education of women. Education for women during the colonial era was limited to learning how to be a wife and mother. Higher education was belived to be an evil for women because it diverted their minds from the primary duties a woman was expected to fulfill. Meyer[26] reported that women were not permitted to enter any college in the United States in the year 1800. The non-public institution became the means by which women were to gain the freedom which had been professed in the United States Constitution, but actually implemented only for men for nearly fifty years following its signing. The founding of Troy Seminary by Emma Willard in New York in 1821 was the first institution established for women. The efforts of Emma Willard, Catherine Beecher, and Mary Lyon in the 1820 s have been held in the same high regard in the education of women as those of Barnard and Mann in founding public education for the common man. The early education of women was truly a non-public undertaking.

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[25] Donald G. Tewksbury, The Founding of American Colleges and Universities ([n.p.] : Archon Books, 1965), p. 28.

[26] Meyer, op. cit., p. 403.

Coeducation. The first coeducational institution was Oberlin College in Ohio, a non-public institution. Four young women were accepted to its classes on equal terms with men in 1833. Cornell College became the first eastern college to become coeducational in 1872. Coeducation was viewed as a threat to virtue and displeasing to God by people in the states east of the Appalachians prior to 1872.[27] The door had been opened to women, allowing for a whole new segment of the population to become more highly educated in America. Every state west of the Mississippi, except Missouri, had made its state university coeducational upon assuming statehood. The support of women's education with public funds was a step forward; however, it was clear that the majority of coeducational institutions in the eastern part of the United States were private.

Teacher training institutions. The first attempts at training teachers for their positions were traced to the non-public institutions of the early 1800 s . In 1823, the Reverend Doctor Samuel Reed Hall was credited with the opening of the first normal school.[28] A private venture, the school was reported to have supplemented the doctor's labors in divinity.

In New York, the Lancastrians established their own teacher training school, and, by the 1820 s , had some twenty such schools in operation. Governor DeWitt Clinton attempted three times during a period of eight years to secure appropriations from the New York legislature for these non-public teacher-training schools to no avail. However, in 1827, the same legislature was reported to have subsidized the privately operated academies to promote the education of teachers.[29]

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[27] Ibid.

[28] Ibid., p. 405.

The efforts of non-public institutions to train teachers led to the development of publicly supported teacher-training institutions. The first such institution of significance was the normal school established at Oswego, New York, by Edward Sheldon. The initiative for experimentation into new fields of endeavor was again carried on by non-public higher education.

Federal aid. Congress as early as 1804 reserved three townships of public land in Indiana for the use of a seminary of learning. In 1806, the territorial government of Indiana incorporated Vincennes University, a privately controlled institution. Another example of direct federal aid was a special act of Congress which granted aid in the form of public lands to Jefferson College in Mississippi in 1832.[30]

The passing of the Morrill Act of 1862 was generally considered an impetus to public higher education; however, it was important to note that several states designated privately controlled institutions for receipt of the benefits of such federal appropriations. Elliott and Chambers reported a case in point.

> A Massachusetts act of 1863 allotted to the Massachusetts Institute of Technology one-third of the annual income from funds accruing to the state under the Morrill Land-Grant Act of

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[29] Ibid.

[30] Edward C. Elliott and M. M. Chambers, The College and the Courts: Judicial Decisions Regarding Institutions of Higher Education in the United States (Boston: D. B. Updike, The Merrymount Press, 1936), p. 236.

> 1862, on condition that the Institute maintained military training and add their designated state officers as members "ex officio" of its governing board. . . Other funds derived by Massachusetts from federal grants and subsidies go to Massachusetts State College at Amherst. The state college once contested the eligibility of the Institute of Technology to participate in the benefit of funds accruing under the Morrill Act, but it was held that there was nothing in the act of Congress nor in the laws of Massachusetts to render this institution ineligible as long as the legislature saw fit to designate it as a land-grant college.[31]

Similar legal cases also arose in Connecticut over funds designated for Yale and in Rhode Island with Brown University in 1863.[32]

Attitude of the people. The attitude of the people during the period from 1636 to 1865 was best summarized by Barnard in the *American Journal of Education* dated January, 1865, in his explanation of the power the church held over the colleges during this period:

> Nearly all our colleges are, furthermore, the creations of the different religious denominations which divide our people. They are regarded as important instrumentalities, through which the peculiarities of doctrine which distinguish their founders are to be maintained, propagated, or defended. It is this which has led to the great multiplication of collegiate institutions in our country, and which is daily adding to their number. It is this which has secured to them their endowments; and though we may regret to see the public munificence thus divided and scattered among many feeble institutions, instead of being concentrated in a few which it would suffice to elevate to the highest rank, yet we must not forget that, in the absence of a motive more powerful than mere devotion to the cause of education, this munificence would have been in a great measure withheld. . . I am persuaded, that if every State in the Union were to establish for itself a college, furnished with every appliance for imparting instruction, on the most liberal scale, and officered by the highest talent the country affords, providing, however, as it must, against the intrusion into such an institution of any sectarian bias, it would fail to divert, to any great extent, from existing institutions, the

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[31] Elliott and Chamber, *op*. *cit*., p. 289.

[32] *Ibid*.

> patronage which they now receive, and would fail to prevent the erection of new ones upon the same principle.[33]

Post-Civil War to World War I Period: (1866-1918)

This era was recognized as the period of great denominational effort in the establishment of colleges in the United States. A total of 444 non-public institutions of higher learning were founded during this fifty-two year period.[34]

Westward migration. The vast migration of the people westward, which began prior to the Civil War, opened new frontiers for the founding of colleges by the various religious denominations and was a major factor in the phonomenal growth of colleges during this period. Since the missionary aspect of the college was paramount to the perpetuation of the "religious culture," the westward expansion provided a fertile area for renewed denominational effort and competition. Tewksbury[35] attested to the importance of these religious efforts when he stated "The forces of frontier democracy demanded the decentralization of educational facilities in higher education, . . ."

Changing concepts. The rise of the state university progressed slowly until about 1885. Before the state university movement could expand, the "charity school concept" of free public education supported by the tax-payer remained a final battleground to be overcome in several states, especially Pennsylvania.[36] Another example of an influence which helped maintain the denominational colleges was the battle in Indiana over tax support of the public schools. Caleb Mills, a professor at Wabash College, presented five addresses before the Indiana legislature in an attempt to gain support for tax support of the schools.[37]

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[33] F. A. P. Barnard, "Improvements Practicable in American Colleges," The American Journal of Education, 1:174-185, January, 1856.

[34] Luman H. Long (ed.), "Education: American Colleges and Universities," The World Almanac and Book of Facts (New York: New York World Telegram and The Sun, 1966), pp. 705-718.

[35] Tewksbury, op. cit., p. 3.

The Kalamazoo case,[38] in 1874, established the right to tax for the support of the public secondary school. The changing concept of education implied above and the growing belief that education was necessary to the general welfare of the United States brought about a period of rapid growth of public colleges and universities. The passage by the Federal government of the Morrill Act in 1862 provided great impetus for the growth of public institutions. Practically every new western and southern state established a state university following this early act.

Further non-public efforts. The higher education of women continued to expand, especially between 1865 and 1900. The founding of Vassar, the first woman's college with a large endowment and classical curricula similar to Harvard's, strengthened the right of women to receive "equal" educational opportunities with the males.[39] The first institution for Negro higher education was organized in 1868 at Hampton Institute. This was the same year the Fourteenth Amendment to the United States Constitution was passed which granted Negroes their citizenship.[40] The expansion of the college to a university was another significant non-public effort. The establishment of Johns Hopkins University as the first all graduate American university through the efforts of Daniel Coit Gilman, and the program he established at the university as its first president had a profound effect upon American higher education.[41] The pioneering of the elective system of curricula programing by students was credited to Harvard University under the effort of President Charles Elliott.[42] The leadership emanating from the non-public institutions of higher learning continued to provide the direction for higher education in the United States during this period.

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[36] Ellwood Cubberley, Public Education in the United States (Boston: Houghton Mifflin Company, 1934), pp. 191-198.

[37] Ibid., pp. 183-187.

[38] Stuart v. School District No. 1 of Kalamazoo, 30 Michigan 69 (1874).

[39] Chris A. DeYoung, Introduction to American Public Education (third edition; New York: McGraw-Hill Book Company, Inc., 1955), p. 219.

Post World War I to World War II Period: (1919-1945)

This period was marked by a decline in the extent of activity related to higher education. A steady rise in the number of permanent non-public colleges and universities was reflected by the establishment of 167 institutions during this twenty-five year period.

Shift in enrollment. For the first time in the history of American higher education, the total enrollment of students enrolled in public colleges and universities exceeded that of private colleges and universities in 1920. These figures, however, included over 8,000 junior college students.[43] The rapid growth of the junior colleges between 1920 and 1940 noticeably affected the continued shift in college student enrollment from private to public institutions. There were approximately 8,000 junior college students in 1920, while in 1940, there were 54,000 reported.[44]

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[40] *Ibid*., p. 214.

[41] Butts and Cremin, *op. cit*., p. 392.

[42] *Ibid*., p. 394.

Federal government. The passage of the Serviceman's Readjustment Act in 1944, the famous "G. I. Bill of Rights," was the major federal activity which benefited the non-public college extensively. "The poverty of colleges and universities is notorious and perennial," according to John Dale Russell of New York University.[45] Student fees have annually provided about 60 per cent of the current cost of operation for institutions under private control and, in some cases, it was as high as 95 per cent. The enrollment of veterans in non-public colleges throughout the nation provided a new impetus since the federal government provided funds directly to the veteran for tuition purposes.

Post World War II to the Present Period: (1946-1965)

The higher education of all qualified American youth emerged during this period as a national goal for purposes of maintaining the general welfare and national security of the nation. The Federal government renewed its efforts in providing increased financial aid to all higher education.

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[43] Office of Education, Total Resident Enrollment in Institutions of Higher Education, Continental United States, 1900-1950 (Washington D. C.: U. S. Government Printing Office), pp. 172-174.

[44] Ibid.

[45] John Dale Russell, "Dollars and Cents: Some Hard Facts," Higher Education: Some Newer Developments, Samuel Baskin, editor (New York: McGraw-Hill Book Company, 1965), p. 274.

Enrollment. A publication by the United States Office of Education reported over one and a half million students enrolled for the first time in four-year non-public institutions of higher learning in the United States during the fall of 1964. This figure represented an increase of 600,000 students over the decade 1954-1964. With a projection of two and a half million by 1974, the phenomenal growth in student enrollments presented numerous questions to the college administrator in terms of maximum enrollment to be accepted, facilities needed, curricular offerings, and like matters.[46]

Federal aid. No period in the history of the United States provided more federal aid to non-public colleges and universities than the period from 1945 to 1965. The first cry of higher education authorities was for funds to build facilities to handle the rapid influx of veterans of World War II. However, Congress first donated war surplus buildings to be placed on campuses for veterans' living quarters. A total of 953 private institutions of higher learning were granted loans by the Federal government, which had been approved under the college housing program, during the period 1951 to 1961. During thi this same period, 554 public institutions received loans for similar facilities such as college housing, cafeterias, student unions, and infirmaries.[47]

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[46] Kenneth A. Simon and Marie G. Fullam, *Projections of Educational Statistics to 1974-1975* (Washington, D. C.: United States Government Printing Office, 1965), p. 10.

[47] Sidney H. Wollner, "The College Housing Program," *Higher Education*, 19: 3-6+, February, 1963.

Federal research programs provided increased funds to non-public colleges and universities. A survey of federal programs provided statistics for the period 1955-1959 in which 296 private and 169 public institutions of higher learning were provided with federal funds for research programs. Approximately half of the twenty-five institutions selected to receive the largest sums granted for research, between \$5.8 and \$191.0 million, were the major non-public universities of the United States. A similar ratio existed between public and non-public institutions in the granting of lesser amounts of research funds for the remaining seventy-five institutions selected by the government.[48]

The passage of the Higher Education Facilities Act of 1963[49] provided \$470 million in grants and loans for the construction of undergraduate and graduate academic facilities for public and non-public institutions of higher learning. Facilities built by grants or loan funds under this act, however, were not to be used for sectarian instruction or as a place for religious worship. Such facilities were further prohibited from being used primarily in connection with any part of the program of a school or department of divinity. Congress passed the Higher Education Act[50] in October, 1965, which provided federal appropriations to public and non-public colleges under six title areas amounting to 235 million dollars. Federal aid was provided to all non-public institutions of higher learning except strictly religious schools or departments of divinity. The question of the separation of church and state was raised in regard to the violation of the United States Constitution in appropriating funds to denominational institutions; however, the United States Supreme Court had not handed down an opinion on this issue at the time of the study.

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[48] J. Kenneth Little, A Survey of Federal Programs in Higher Education, U. S. Department of Health, Education and Welfare, Office of Education (Washington, D. C.: United States Government Printing Office, 1962), pp. 1-5.

[49] Higher Education Facilities Act, 77 Stat. 363 (1963), 20 U.S.C.A. §§ 701-57 (Supp., March, 1964).

[50] Higher Education Act of 1965, 79 Stat. 1219 (1965).

State aid. Three states continued to make grants of appropriated funds to non-public colleges and universities. Pennsylvania led the other states in the amount appropriated. The Pennsylvania legislature was empowered to provide funds for private, non-sectarian colleges and universities such as the University of Pennsylvania. Maryland has appropriated funds annually to Johns Hopkins University's School of Engineering and smaller amounts to other non-public institutions in the state. A medical school at a non-public university was the annual recipient of funds from the state of Florida. State aid, which began with the founding of Harvard in 1636, had not completely ceased in 1965.[51]

Summary. The existence of a parallel system of higher education, public and non-public, was unique to the United States. M. M. Chambers' statement in the College and the Courts Since 1950 best summarized the current status of the non-public institution of higher learning.

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[51] Russell, op. cit., p. 295.

> Though declining considerably in quantitative prominence in the total picture, the private colleges and universities fill an indispensable place in a pluralistic society. . . . Under our constitutions education cannot be monopolized by governmental authority; and the right to attend and maintain private colleges suited to particular religious preferences or to other private sentiments not unlawful is preserved. A freedom of choice broader than governmental agencies alone could offer is thus kept open.[52]

II. REVIEW OF SELECTED LITERATURE

Introduction

The literature reviewed in this section pertained to the legal status of non-public colleges and universities. The materials perused in this section were selected doctoral dissertations, books of legal reference, legal encyclopedias, government documents, and periodicals.

Doctoral Dissertations

A list of doctoral dissertations on various subjects related to the legal aspects of education resulted in the identification of 289 studies which had been completed between 1953 and 1964. In the classification "higher education" nineteen dissertations were reported.[53] The balance of the studies covered various aspects of school law related to elementary and secondary education and were not pertinent to the present study.

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[52] Chambers, op. cit., p. 169.

[53] M. Chester Nolte (comp.), Doctoral Studies in the Field of School Law, 1953-1964 (Topeka, Kansas: National Organization on Legal Problems of Education, 1965), (Mimeographed.)

Walker,[54] University of Southern California, studied the court decisions on the legal relationship between American colleges and universities and their students. Litigated cases pertaining to (1) matters of admission, (2) governance and control, (3) conference of degrees and diplomas, and (4) tort liability from 1860 to 1961 were reported. Walker reported the actual cases for each of the four areas stated above in a breakdown state-by-state and, in addition, those federal cases which were pertinent. Principles of common law were not extracted since the researcher stated that the value of reading all of the facts of the case was considered more essential for purposes of making comparisons.[55]

A study by Brewer[56] on the roles of the educational institution, the legislature, and the courts in the area of behavior of college students appeared in 1958. Brewer concluded that statutes related to the behavior of the college student were often outdated and far removed from the realities of college life. Legislation must be flexible and consistent with the mores of the society to be of value.

The legal basis for the operation of selected student personnel services in colleges and universities was researched by Bakken.[57] The constitutions and statutes of each of the forty-eight states which pertained to the study were reported. Court decisions interpreting the various legislative enactments were included as a part of the study. Bakken concluded that there was adequate legal authority, either through the legislature or the courts, for the operation of all included student personnel services at state supported colleges and universities.[58] This study provided the data for a monograph entitled The Legal Basis for College Student Personnel Work[59] published by the American Personnel and Guidance Association in 1961.

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[54] Paul Walker, "Court Decisions Dealing with Legal Relationships Between American Colleges and Universities and Their Students" (unpublished doctoral dissertation, University of Southern California, Los Angeles, 1961).

[55] Ibid., p. 10.

[56] Mary E. Brewer, "Controls Placed Upon Student Behavior by the Colleges, Court and Legislature" (unpublished doctoral dissertation, Duke University, Durham, North Carolina, 1958).

[57] Clarence Bakken, "An Analysis of the Legal Basis for Operating Selected Student Personnel Services in State Tax Supported Four-Year Colleges and Universities in the United States" (unpublished doctoral dissertation, University of Denver, Denver, 1959).

Pittillo[60] studied the tort liability of colleges and universities and devoted one chapter to judicial opinions involving charitable institutions of which non-public colleges and universities were a part. The study was limited to the examination and reporting of judicial opinion which involved suits for damages. The common law rule of charitable immunity, according to Pittillo, was undergoing a change in court interpretation. He indicated that the barrier of "charitable immunity" was in the process of being lowered by the courts.[61]

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[58] Ibid., p. 181.

[59] Clarence Bakken, The Legal Basis for College Student Personnel Work (Student Personnel Series No. 2; Washington, D.C.: American College Personnel Association, 1961).

[60] Robert Pittillo, "Tort Liability of Colleges and Universities" (unpublished doctoral dissertation, Duke University, Durham, North Carolina, 1961).

[61] Ibid., p. 191.

A study by Porter[62] sought the determination of legal principles which were involved in ascertaining whether administrative offices and faculty residences were taxable or tax-exempt through an analysis of appellate court decisions. Legal principles were reported for both public and non-public institutions of higher learning. Colleges and universities were involved in nearly three times as many cases involving taxation of residences as were any other type of educational institution according to the study.[63]

The church-state issue provided the subject for two studies. Lachman[64] reported on sixteen federal aid to education bills and studied the effect the attitudes of national teacher organizations and religious organizations had upon the passage or veto of these bills between 1937 and 1950. Loveless[65] studied the relationship of the Seventh Day Adventist institutions of higher learning to various federal aid programs. These eleven denominational institutions were reported to have received large amounts of federal aid. The concern whether there had been a "loss of freedom" for the institution was raised. The necessity of curtailing programs at the colleges if the receipt of federal funds required meeting objectives which were inconsistent with the philosophy and goals of the institutions was a stated conclusion.

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[62] James Porter, "Court Interpretation of Tax Cases Involving Administrative and Faculty Residences in Higher Education" (unpublished doctoral dissertation, University of Pittsburgh, Pittsburgh, 1962).

[63] Ibid., p. 29.

[64] Seymour Lachman, "The Church-State Issue as Reflected in Federal Aid to Education Bills, 1937-1950" (unpublished doctoral dissertation, New York University, New York, 1963).

[65] W.A. Loveless, "Federal Aid and the Church-Operated College" (unpublished doctoral dissertation, University of Maryland, College Park, 1964).

Several dissertations were oriented to the legal aspects of the junior college. A study by Gacek[66] reported private junior college legislation in the United States. Court decisions and substantive laws which were pertinent were included as one section of the study. Brunner[67] established a criterion for evaluation of a state legislative program for community junior colleges. Aspects of the legislative program included provisions for: (1) certification by the state, (2) grants of power to state and local authorities, and (3) financial support.

Books

A limited number of books were written which related directly to the legal aspects of higher education in the United States. The most recent text in the field, The Colleges and the Courts Since 1950,[68] was published in 1964 under the authorship of M. M. Chambers of Indiana University. This book included significant court cases relating to students, faculty and employees, government and charity, support from private sources, and property as these areas pertained to the legal existence or operation of public and non-public colleges and universities. A noteworthy aspect of Chambers' text was the treatment of college education as a "necessary" for a student rather than earlier writings which held education to be simply a "right." The opening statement by Chambers was important for an understanding of this new emerging concept regarding the parent(s) responsibility for providing higher educational opportunity.

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[66] Edward Gacek, "Private Junior College Legislation in the United States" (unpublished doctoral dissertation, University of Connecticut, Storrs, 1958).

[67] Kenneth Brunner, "Criteria for Evaluating a State's Legislative and Administrative Programs for Community Junior College Education" (unpublished doctoral dissertation, University of Florida, Gainesville, 1956).

[68] M. M. Chambers, The Colleges and the Courts Since 1950 (Danville, Illinois: Interstate Printers and Publishers, 1964).

> The word "necessary" is used here as a noun to connote any item so essential to the welfare of a minor that his parent may be held responsible to pay a reasonable price for it if it is furnished to the minor at a time when he needs it. This use of the word derives from the ancient maxim that a minor's contracts are voidable except when for the purchase of "necessaries," which include food, shelter, clothing, medical care, and a modicum of schooling.[69]

The early writings of Chambers dated back to 1936 when Chambers and Elliott co-authored The College and the Courts.[70] This volume was believed to be a pioneer effort on the part of the two authors to assemble and to classify the more significant records of the judicial experience of American institutions of higher education. Four chapters were devoted to privately controlled institutions, especially to aspects of the corporate status of these non-public colleges and universities. The constitutional provisions for each state regarding colleges and universities were included in the appendix of this pioneer work.

The next three texts in this series were all entitled The College and the Courts and covered the periods 1936-1940,[71] 1941-1945,[72] and 1946-1950.[73] Chambers, as the single author of these three publications, adhered to a similar format while continuing to update the legal conditions of the time as determined by the common law of the courts.

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[69] Ibid., p. 3.

[70] Edward C. Elliott and M. M. Chambers, The College and the Courts: Judicial Decisions Regarding Institutions of Higher Education in the United States (Boston: D.B. Updike, The Merrymount Press, 1936).

The book, College Law: A Guide for Administrators,[74] was published in 1961 under the auspices of the American Council on Education. This timely text was written by Thomas E. Blackwell, who had been the author of a series of articles on "Legal Problems of Colleges and Universities" in the periodical College and University Business. The purpose of this book was to provide the college administrator with an awareness and better understanding of basic law and legal concepts related to college organization and administration. As a means of accomplishing this purpose, Chapter I was devoted to "Basic Legal Concepts" to orient the college administrator to legal terminology. Non-public institutions were treated relative to corporate status, control by the state, federal funds, police powers, taxation, and tort liability. Blackwell placed heavy emphasis upon the tax problems of colleges in terms of students, property, and donations to the institution. The appendix contained a special report of the state constitutional and statutory provisions on the tax status of the property of non-public institutions of higher learning. A commentary on specific tax cases was also included in this section.

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[71] M. M. Chambers, The College and the Courts, 1936-1940 (Boston: D. B. Updike, The Merrymount Press, 1941).

[72] M. M. Chambers, The College and the Courts, 1941-1945 (New York City: The Carnegie Foundation for the Advancement of Teaching, 1940).

[73] M. M. Chambers, The College and the Courts, 1946-1950 (New York: Columbia University Press, 1952).

[74] Thomas E. Blackwell, College Law: A Guide for Administrators (Washington, D.C.: American Council on Education, 1961).

The Supreme Court was the authority for a book by Spurlock in 1955.[75] Four of the thirty-nine cases reviewed were of particular import for administrators of non-public institutions. The Dartmouth College case held the charter to be a contract which could not be abrogated without the consent of the trustees; the Berea College case imposed segregation upon a private institution; the Vidal case upheld the provisions of Gerard's will which barred missionaries and ministers from entering the premises of the college; and, the transmission of educational material by mail across state lines by a correspondence school was considered to be interstate commerce and not to be obstructed by the states in a fourth case.[76] A section which explained the functions of the United States Supreme Court and of the lower courts, which were subject to powers of the Supreme Court, was a valuable inclusion for purposes of research. Fellman[77] published a similar book containing cases of the United States Supreme Court. The 1959 case of Barenblatt v. United States was pertinent on the basis of academic freedom as a right of the profession.

The book, Charters and Basic Laws of Selected American Universities and Colleges,[78] published in 1934 by the Carnegie Foundation for the Advancement of Teaching was valuable for the legal-historical conditions of the period which were reported. Elliott and Chambers selected fifty-one representative institutions of higher learning, both public and non-public, for the purpose of providing an overview of the legal status of higher education during the period. The charter, pertinent state constitutional and statutory law, and all legal cases in which each institution had been a party were included. Dartmouth College was an excellent example of this legal coverage which was historically significant. The conditions of the period relative to the vast change which had taken place on college campuses such as the Workmen's Compensation Laws and their legal implications for the college administrator added immeasurably to the historical development of non-public colleges and universities. An analysis of the charters of each of the fifty-one public and non-public institutions provided data relevant to the legal composition of the board of trustees, the method of election, and the relationship of ex officio members.[79]

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[75] Clark Spurlock, Education and the Supreme Court (Urbana: University of Illinois Press, 1955).

[76] Ibid., pp. 234-235.

[77] David Fellman (ed.), The Supreme Court and Education (New York: Bureau of Publications, Columbia University, 1960).

State Control of Private Incorporated Institutions of Higher Education was published by Teachers College, Columbia University in 1926.[80] In this research study, L. W. Bartlett determined the extent of state control of private incorporated institutions of higher learning as defined in the United States Supreme Court decisions and as provided in the states legislation. The extent of state control as defined in the charters of thirty-nine colleges and universities was also an integral part of the research. Although the factual data were out-dated, the similarity in purpose of the present study provided insight for the current study of charters of non-public colleges and universities.

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[78] Edward C. Elliott and M. M. Chambers, Charters and Basic Laws of Selected American Universities and Colleges (New York City: The Carnegie Foundation for the Advancement of Teaching, 1934).

[79] Ibid., pp. 12-23.

[80] L. W. Bartlett, State Control of Private Incorporated Institutions of Higher Education (New York: Teacher's College, Columbia University, 1926).

Tenure in American Higher Education: Plans, Practices, and the Law[81] provided background for the basic concept that a faculty member who has served a reasonable apprenticeship should enjoy security in his post. Published shortly after the McCarthy era, particular emphasis was placed upon academic freedom, tenure, and due process.

Government Publications

The federal government was active in the production of materials in the field of higher education. The _State and Non-Public Schools_[82] by Beach and Will was published in 1958 and placed its emphasis on the state legal responsibilities for non-public educational institutions, especially the role of the State Department of Education. Enrollment figures for non-public colleges and universities were included for a period of years and were compared with public higher education. The constitutional and statutory references to non-public higher education in each state were also included.

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[81] Clark Byse and Louis Laughlin, _Tenure in American Higher Education: Plans, Practices, and the Law_ (Ithaca, New York: Cornell University Press, 1959).

[82] Fred Beach and Robert Will, _The State and Non-Public Schools_ (Washington, D.C.: U.S. Department of Health, Education and Welfare, 1958).

An annual publication which attempts to keep college administrators, legislators, and other interested persons informed on current state legislation was first undertaken in 1956, and has been published each year for the past eight years.[83] The compilation was devoted primarily to legislation pertinent to public colleges and universities in each state and had limited value for those primarily interested in non-public institutions of higher learning; however, current trends in legislation related to higher education served as a valuable guide.

The Education Directory, Part III, Higher Education, 1964-1965[84] presented specific information for every institution in the United States in regard to institutional control, type of program, highest level of program offered and the number of institutions in each of the classifications. This publication was a non-legal reference, but valuable to any researcher in higher education. The Biennial Survey of Education[85] also provided statistical data of value for research of public and non-public higher education in the United States.

Periodicals

The Education Index and the Reader's Guide to Periodicals provided references to numerous articles related to the problem of the study.

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[83] Ernest V. Hollis and S. V. Martorana, Survey of State Legislation Relating to Higher Education (January 1, 1963, to December 31, 1963). Office of Education, United States Department of Health, Education and Welfare, Circular 748. (Washington, D.C.: Government Printing Office, 1964).

[84] U. S. Office of Education, Education Directory, 1964-1965, Part 3, Higher Education (Washington, D.C.: United States Government Printing Office, 1965).

[85] Henry G. Badger, Biennial Survey of Education in the United States, (Washington, D.C.: United States Government Printing Office).

Government-college relationship. A wide range of concerns were expressed in articles which dealt with the relationship between the government and higher education. J. W. Gardner,[86] Secretary of Health, Education and Welfare at the time of the study, stated that the colleges and universities were faced with the most exciting and most trying period in their long history. One of the seven major problems or challenges was the necessity to bring the small, independent liberal arts college back into the main stream of higher education. Unable to compete for able faculty and students, it was held these institutions would become a weak and deteriorated part of the higher education system without some type of assistance. Gardner suggested (a) small colleges band together to cooperate among themselves or (b) a small college cooperate with a nearby university while still retaining its autonomy. Another view of the plight of the non-public college and university was expressed by Dr. Carrol Newsom,[87] former president of New York University, at a Catholic Conference held in 1963. Agreeing with Gardner that the very life of the non-public institution was in jeopardy, Newsom expressed the fear that these institutions would "sell-out" to the state due to a rapid increase in enrollment.

Three areas of special concern to members of the American Association of University Professors (A.A.U.P.) which resulted from the passage of two major higher education bills by Congress in 1965 were

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[86] John W. Gardner, "Agenda for the Colleges and Universities," The Journal of Higher Education, 36:359-365, October 1965.

[87] "Assuming the Worst," America, 108:604-605, April 27, 1963.

(1) academic and related freedoms, (2) church-state relationships, and (3) civil rights. The fact the "loyalty" requirements in federal programs had been left out or rescinded in several of the programs passed during the 1964 and 1965 sessions of Congress was viewed with approval. The Arizona loyalty oath requirement was the focus of attention since it was accepted for review by the United States Supreme Court.[88] The Harvard Law Review[89] raised the question as to the extent the First Amendment of the Constitution proscribed church-state interaction in light of the Higher Education Facilities Act of 1963 which authorized federal funds for church-related colleges and universities. Two previous United States Supreme Court decisions were presented which blocked the possibility of direct legal challenge of the issue in the courts. However, a case was filed in Maryland by the Horace Mann League of the United States challenging the constitutionality of state aid to church-related colleges. The possibility of eventual Supreme Court review was thought to possess a possible significant bearing on the constitutional status of similar federal acts. Garber[90] reported that the circuit court decision upholding state appropriations for church-related institutions was of little significance since the case would be appealed to the United States Supreme Court on the question of the constitutionality of such appropriations for final decision.

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[88] Herman I. Orentlicher, "Education in Legislation and the Courts," A.A.U.P. Bulletin, 51:429-436, December 1965.

[89] "Constitutional Law-Higher Education Facilities Act-Constitutionality of Federal Financial Aid to Church-Related Colleges," 77 Harvard Law Review 1353 (1964).

[90] Lee O. Garber, "State May Aid Parochial Schools: Maryland Court," Nations Schools, 75:58, May 1965.

Faculty tenure. Legal protection of term contracts and tenure for faculty were considered important issues by Murphy, professor of law at the University of Missouri.[91] The tenure contract of a professor in a private college was reviewed by the Ohio State Law Journal.[92] In general, the tenure statutes do not apply to teachers in college; however, the state of Wisconsin was an exception.

Academic freedom. A growing unrest on college campuses was reflected by several articles concerning faculty activities. The Christian Century,[93] in reporting the sudden resignation of three professors in a Southern Baptist Seminary, indicated the resignations were probably due to a growing split between the intellectual and the non-intellectual approach to the religion. A strike at St. John's University, a Catholic institution, by a unionized faculty of laymen was an indication of an open split between administration and lay faculty. The implications of the possible firing of faculty members was a legal consideration for those in higher education to contemplate. The ramifications of the unionization of college faculty was reported by McIntosh.[94] The employee-manager relationship implicit in such a move held legal implications for future concern of administrators. McIntosh indicated that a union type relationship may be necessary since faculties have demanded academic freedom while denying the necessity of academic responsibility.

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[91] William P. Murphy, "Education Freedom in the Courts," A.A.U.P. Bulletin, 49:309-327, winter 1963.

[92] "Judicial Review of the Tenure Contract of a Professor in a Private College," 25 Ohio State Law Journal 289, (1964).

[93] "Seminary Professors Resign," The Christian Century, 82:101-102, January 27, 1965.

[94] Carl McIntosh, "The Unionization of College and University Teachers," Journal of Higher Education, 36:373-378, October 1965.

America,[95] a Catholic weekly, contained two editorial reports on the barring by administrators of Catholic University of America of four prominent Catholic theologians from taking part in a series of student-sponsored lectures at the campus. The four theologians were identified with the "liberal" side in the current controversies taking place within the church. Examples of censorship of speakers from college campuses was noted by Murphy with the barring of Norman Thomas at Lehigh University; Gus Hall, former secretary of the American Communist Party, from Fairleigh Dickinson University; and George Rockwell, self-styled Nazi from Northwestern University.[96]

Student admissions. The constitutionality of discriminatory limitations in educational scholarship grants was reported by Shad in the New York University Law Review[97] in 1958. A private college reportedly did not come within the jurisdiction of the Fourteenth Amendment unless the state became involved to the extent that the institution lost its private character. The finding by Shad held that private institutions were able to discriminate in their admissions and their scholarship policies if they so choose.[98] Litigation relative to racial discrimination in the admission policies of private educational institutions was considered to be the next probable subject for the courts.[99] Jacobson[100] noted in 1963 that college admission policies had rarely been the subject of litigation with the dramatic exception of racial-segregation cases.

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[95] "The Goldfish Bowl," America, 108:329; "University Headaches," America, 108:430-431.

[96] Murphy, op. cit., p. 291.

[97] Patricia P. Shad, "Constitutionality of Restricted Scholarships," 33 New York University Law Review 604 (1958).

[98] Ibid., p. 615.

Due process. The rights of students were the primary concern of educators attending the American Council on Education meeting held in October 1965. Byse[101] reported on "Procedural Due Process and the College Student: Law and Policy." Courts in the future were expected to gradually cease to distinguish between public and private institutions with respect to a "fair hearing." "Due Process and the 'Private' Institutions" were the topics of McIlhenny.[102] The distinction between public and private institutions was becoming less distinct since federal funds were employed more and more to support non-public institutions of higher learning. Mudinger[103] and Shoul[104] developed papers relevant to due process and the college student. Shoul, a student, indicated need for expansion of communication on campus for all concerned in this matter.

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[99] Ibid., p. 617.

[100] Sol Jacobson, "Judicial Review of College-Admission Policies," Journal of Higher Education, 34:432-437, November 1963.

[101] Clark Byse, "Procedural Due Process and the College Student: Law and Policy" (paper read at American Council on Education, Washington, D.C., October 1965). College Student Personnel Abstracts, 1:97, January 1966.

[102] Edmond McIlhenny, "Due Process and the 'Private' Institution" (paper read at American Council on Education, Washington, D.C., October 1965). College Student Personnel Abstracts, 1:98, January 1966.

[103] Donald C. Mudinger, "Due Process and the College Student" (paper read at American Council on Education, Washington, D.C., October 1965). College Student Personnel Abstracts, 1:98, January 1966.

[104] Dennis Shoul, "Due Process and the College Student" (paper read at American Council on Education, Washington, D.C., October 1965). College Student Personnel Abstracts, 1:99, January 1966.

In loco parentis. Strickland[105] questioned the applicability of the concept of loco parentis to college authorities. He maintained that legal parental authority required the responsibility for support, for corporal punishment, for legal support in case of law suit, for permission to marry, and for custody which a college could not assume. The relationship between student and college was necessarily a contractual one, and not a case for loco parentis. Herbert Stroup,[106] dean of students at Brooklyn College, maintained the very nature of the college as a social organization required the imposition of some limitations on student behavior. The challenge by Stroup was for the college to make these limitations more explicit.

Confidentiality. Confidentiality was to be handled within the framework of the "total agency" policy and not to be determined by the individual counselor according to Worman.[107] An opposite view was expressed by Vance[108] from the University of Minnesota. His statement was "at Minnesota, we are apparently going to continue to enjoy the risky pleasures of professional judgment and also have the fun of talking about it as a continuing matter for staff review."[109] The question of confidentiality of a student's records at an institution of higher learning was a matter of growing conjecture on the part of administrators and other college personnel.

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[105] Donald A. Strickland, "In Loco Parentis--Legal Mots and Student Moral," The Journal of College Student Personnel, 6:335-340, November 1965.

[106] Herbert H. Stroup, "Freedom and Responsibility in Higher Education: A Study of the Institutional Limitations on Human Freedom" (Christian Faith and Higher Education Institute, United Presbyterian Church, U.S.A., undated). College Student Personnel Abstracts, 1:100, January 1966.

[107] Roy E. Worman, "Confidentiality Interpreted by Established Agency Policy," The Personnel and Guidance Journal, 42:257-259, November 1963.

[108] Forrest L. Vance, "Confidentiality Interpreted by Professional Judgment and Staff Review," The Personnel and Guidance Journal, 42:254-257, November 1963.

Summary

The current literature in the field of higher education related to non-public institutions of higher learning was most prevalent in the area of the need for adequate financing. The financial problems of the small, non-public liberal arts college received extensive coverage in the journals and the books in the field. Numerous articles were written on the subject of Federal aid and many articles provided interpretations of the Higher Facilities Act of 1963 and the Higher Education Act of 1965. The student personnel journals treated the legal areas of "due process" and confidentiality at length.

The literature related to non-public institutions of higher learning was generally contained within journal articles or books devoted to public and non-public higher education. References were generally made to non-public higher education in books under special chapter headings or interspersed within the content devoted to public higher education. Literature which dealt solely with non-public higher education was limited.

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[109] *Ibid.*, p. 256.

CHAPTER III

SURVEY OF STATE CONSTITUTIONS AND STATUTES

The purpose of this chapter was to determine the legal status of the non-public college and university as contained in the constitutions and the statutes of each of the fifty states. The constitutional references to non-public institutions of higher learning pertained to: (a) the general rights and liabilities of all corporations, (b) the tax-exempt status of non-profit educational corporations, and (c) the prohibition of any public funds or property to educational institutions under the control of a sectarian denomination. The statutory references to non-public institutions of higher learning pertained to: (a) the corporate status of educational institutions related to the powers, rights, and responsibilities of such existence, (b) the extent educational institutions were exempted from taxation, (c) the extent to which the state was involved in supervision or control of the academic or allied aspects of the non-public institution, (d) the types of state scholarships, loans, or other aids which were valid for attendance at non-public colleges or universities, as well as public institutions, (e) the rights and responsibilities of students enrolled in non-public institutions, and (f) miscellaneous provisions pertinent to trustees, officers, faculty, or students of non-public colleges and universities.

The references contained in this chapter reflected the substantive law of record as of January 1, 1966. The session laws and the latest cumulative supplements to the bound volumes of the state codes were utilized for this purpose.

I. STATE CONSTITUTIONAL PROVISIONS RELATED TO NON-PUBLIC INSTITUTIONS OF HIGHER LEARNING

The constitutions of all of the fifty states were surveyed for the purpose of locating references deemed pertinent to the determination of the legal status of non-public institutions of higher learning. The results of the survey indicated that all references contained in the constitutions to non-public colleges and universities could be classified under two main categories; namely, (a) educational provisions containing direct references to non-public institutions of higher learning, and (b) corporate provisions containing implications for non-public institutions chartered under the laws of the state.

Eight specific statements were developed under the category of educational provisions. The eight statements were (1) appropriation of state funds to any denominational or other private educational institution was prohibited; (2) appropriation of public money or donation of property by the state of any political subdivision to any educational institution controlled by a sectarian denomination was prohibited; (3) real and personal property used exclusively for non-profit educational purposes was exempted from taxation; (4) provisions for other types of tax exemption were designated; (5) educational corporations were granted corporate powers through the general laws of the state subject to future amendment, alteration, or repeal by the legislature; (6) colleges or universities were granted corporate rights and powers by special acts of the legislature; (7) provisions for bequests, donations, and endowments were in force; and (8) miscellaneous provisions were in force. The constitutional references related to each of the eight statements were analyzed in the ensuing section.

Educational Provisions

Under this heading, the constitutions of Delaware, Maryland, Tennessee, Vermont, and Washington contained no provisions directly related to non-public institutions of higher learning. The forty-five other states were analyzed under eight specific statements and tabulated in Table I, pp. 60 ff.

Appropriation of state funds to any denominational or other private educational institution was prohibited. Twenty-nine state constitutions contained one or more articles prohibiting state funds from being appropriated to denominational or other private educational institutions. Such appropriations were possible in Alabama and Iowa if passed by a two-thirds vote of the state legislature. Public funds were prohibited from aiding teachers of any denominational religion in Iowa and Missouri. The state of Mississippi held that no funds may be appropriated to support any sectarian school unless it was conducted as a free school. While prohibiting the appropriation of funds to any denominational or sectarian institution, corporation, or association, the state of Pennsylvania had provided for the granting of scholarship grants or loans for higher education to students enrolled in any public or private institution of higher learning. The state, however, specifically prohibited the granting of such scholarships or loans to any person enrolled in a theological seminary or school of theology.

TABLE I

PROVISIONS FOR EDUCATIONAL INSTITUTIONS CONTAINED IN THE CONSTITUTIONS OF EACH OF THE FIFTY STATES

Constitutional Provisions for Educational Institutions	Citation to Constitutional Articles by State												
	Alabama	Alaska	Arizona	Arkansas	California	Colorado	Connecticut	Delaware	Florida	Georgia	Hawaii	Idaho	Illinois
1. Appropriation of state funds to any denominational or other private educational institution was prohibited.	Art. 4 Sec. 73	Art. 8 Sec. 1	Art. 2 Sec.12	Art. 14 Sec. 2	Art. 9 Sec. 8	Art. 5 Sec. 34	Art. Eighth Sec. 2			Art. 1 Ch. 2-1 § 2-114 ¶ XIV	Art. 9 Sec. 1	Art. 9 Sec. 5	
2. Appropriation of public money or donation of property by the state or any political subdivision to any educational institution controlled by a sectarian denomination was prohibited.			Art. 2 Sec.12		Art. 4 Sec. 30	Art. 9 Sec. 7							
3. Real and personal property used exclusively for non-profit educational purposes was exempted from taxation.	Art. 11 Sec.217	Art. 9 Sec. 4	Art. 9 Sec. 2		Art. 13 Sec. 1A				Art. 16 Sec. 6	Art. 7 Ch. 2-54 § 2-303 ¶ III			
4. Provisions for other types of tax exemptions were designated. (Corporate franchise tax exemption[a]; Exemption by charter[b]; All corporations subject to assessment.[c])	Art. 12 Sec.229[a]									Ch. 2-3 § 2-303 ¶ XIV[b]			
5. Educational corporations were granted corporate powers through the general laws of the state subject to future amendment, alteration, or repeal by the legislature.	Art. 12 Sec.299								Art. 3 Sec. 25				Art. 8 Sec. 3

TABLE I (continued)

Constitutional Provisions for Educational Institutions	Citation to Constitutional Articles by State												
	Alabama	Alaska	Arizona	Arkansas	California	Colorado	Connecticut	Delaware	Florida	Georgia	Hawaii	Idaho	Illinois
6. Colleges or universities were granted corporate rights and powers by special act of the legislature.					Art. 9 Sec. 10- Sec. 13		Art. Eighth Sec. 1						
7. Provisions for bequests, donations, and endowments were in force. (Endowment funds may be invested[a]; Limitation on amount of estate the college may receive[b]; Lands and monies must be restricted to objects for which donated[c]; Restriction placed on endowments from state.[d])													Art. 8 Sec. 2[c]
8. Miscellaneous provisions were in force. (Faculty may hold political office[a]; State to encourage private institutions[b]; Limitation on real estate holdings[c]; Private institution may join state system of higher education[d]; Students do not lose voting residence by attendance at a college.[e])													

TABLE I (continued)

Constitutional Provisions for Educational Institutions	Citation to Constitutional Articles by State											
	Indiana	Iowa	Kansas	Kentucky	Louisiana	Maine	Maryland	Massa-chusetts	Michigan	Minnesota	Mississippi	Missouri
1. Appropriation of state funds to any denominational or other private educational institution was prohibited.	Art. 1 Sec. 6	Art. 3 Sec. 31			Art. 4 Sec. 8					Art. 1 Sec. 16	Art. 8 Sec.208	Art. 1 Sec. 7
2. Appropriation of public money or donation of property by the state or any political subdivision to any educational institution controlled by a sectarian denomination was prohibited.			Art. 12 Sec. 1									
3. Real and personal property used exclusively for non-profit educational purposes was exempted from taxation.	Art. 10 Sec. 1		Art. 11 Sec. 1	Revenue and Taxation Sec. 170	Art. 10 Sec. 4				Art. 9 Sec. 4	Art. 9 Sec. 1		Art. 10 Sec. 6
4. Provisions for other types of tax exemptions were designated. (Corporate franchise tax exemption[a]; Exemption by charter[b]; All corporations subject to assessment.[c])												
5. Educational corporations were granted corporate powers through the general laws of the state subject to future amendment, alteration, or repeal by the legislature.								Amend. Art. 18 Sec. 2	Art. 1 Sec. 4			Art. 9 Sec. 8

TABLE I (continued)

Constitutional Provisions for Educational Institutions	Citation to Constitutional Articles by State											
	Indiana	Iowa	Kansas	Kentucky	Louisiana	Maine	Maryland	Massa-chusetts	Michigan	Minnesota	Mississippi	Missouri
6. Colleges or universities were granted corporate rights and powers by special act of the legislature.								Pt. 2 Ch. 5 Art. 1 Sec. 1				
7. Provisions for bequests, donations, and endowments were in force. (Endowment funds may be invested[a]; Limitation on amount of estate the college may receive[b]; Lands and monies must be restricted to objects for which donated[c]; Restriction placed on endowments from state.[d])						Art. 8 Literature Sec. 1[d]			Art. 9 Sec. 19[a]		Art. 14 Sec.270[b]	
8. Miscellaneous provisions were in force. (Faculty may hold political office[a]; State to encourage private institutions[b]; Limitation on real estate holdings[c]; Private institution may join state system of higher education[d]; Students do not lose voting residence by attendance at a college.[e])					Art. 13 Sec. 1[c]			Amend. Pt. 2 Ch. 6 Art. 2[a]				

TABLE I (continued)

Constitutional Provisions for Educational Institutions	Citation to Constitutional Articles by State												
	Montana	Nebraska	Nevada	New Hampshire	New Jersey	New Mexico	New York	North Carolina	North Dakota	Ohio	Oklahoma	Oregon	Pennsylvania
1. Appropriation of state funds to any denominational or other private educational institution was prohibited.	Art. 5 Sec. 35			Part Second Art. 83		Art. 12 Sec. 3 Art. 4 Sec. 31		Art. 9 Sec. 3	Art. 8 Sec. 152			Art. 1 Sec. 5	Art. 3 Sec.17 Sec.18
2. Appropriation of public money or donation of property by the state or any political subdivision to any educational institution controlled by a sectarian denomination was prohibited.		Art. 12 Sec. 1			Art. 4 Sec. 7 Par. 9	Art. 11 Sec. 13							
3. Real and personal property used exclusively for non-profit educational purposes was exempted from taxation.	Art. 12 Sec. 2	Art. 8 Sec. 2	Art. 8 Sec. 2 Art. 10 Sec. 1			Art. 8 Sec. 3	Art. 16 Sec. 1	Art. 5 Sec. 5			Art. 10 Sec. 6		
4. Provisions for other types of tax exemptions were designated. (Corporate franchise tax exemption[a]; Exemption by charter[b]; All corporations subject to assessment.[c])										Art. 13 Sec. 4[c]			
5. Educational corporations were granted corporate powers through the general laws of the state subject to future amendment, alteration, or repeal by the legislature.	Art. 11 Sec. 8	Art. 7 Sec. 11	Art. 11 Sec. 10				Art. 11 Sec. 4				Art. 2 Sec. 5		

TABLE I (continued)

Constitutional Provisions for Educational Institutions	Citation to Constitutional Articles by State												
	Montana	Nebraska	Nevada	New Hampshire	New Jersey	New Mexico	New York	North Carolina	North Dakota	Ohio	Oklahoma	Oregon	Pennsylvania
6. Colleges or universities were granted corporate rights and powers by special act of the legislature.													
7. Provisions for bequests, donations, and endowments were in force. (Endowment funds may be invested[a]; Limitation on amount of estate the college may receive[b]; Lands and monies must be restricted to objects for which donated[c]; Restriction placed on endowments from state.[d])										Art. 6 Sec. 1[c]			
8. Miscellaneous provisions were in force. (Faculty may hold political office[a]; State to encourage private institutions[b]; Limitation on real estate holdings[c]; Private institution may join state system of higher education[d]; Students do not lose voting residence by attendance at a college.[e])				Part Second Art. 83[b]							Art. 13-A Sec. 4[d]		

TABLE I (continued)

Constitutional Provisions for Educational Institutions	Citation to Constitutional Articles by State											
	Rhode Island	South Carolina	South Dakota	Tennessee	Texas	Utah	Vermont	Virginia	Washington	West Virginia	Wisconsin	Wyoming
1. Appropriation of state funds to any denominational or other private educational institution was prohibited.	Art. 12 Sec. 4				Art. 1 Sec. 7	Art. 1 Sec. 4		Art. 9 Sec. 141			Art. 1 Sec. 18	Art. 1 Sec. 19 Art. 3 Sec. 36
2. Appropriation of public money or donation of property by the state or any political subdivision to any educational institution controlled by a sectarian denomination was prohibited.		Art. 3 Sec. 34										
3. Real and personal property used exclusively for non-profit educational purposes was exempted from taxation.		Art. 10 Sec. 4						Art. 13 Sec. 183		Art. 10 Sec. 1		
4. Provisions for other types of tax exemptions were designated. (Corporate franchise tax exemption[a]; Exemption by charter[b]; All corporations subject to assessment.[c])												
5. Educational corporations were granted corporate powers through the general laws of the state subject to future amendment, alteration, or repeal by the legislature.		Art. 11 Sec. 9	Art. 8 Sec. 16			Art. 11 Sec. 13						Art. 7 Sec. 8

TABLE I (continued)

Constitutional Provisions for Educational Institutions	Citation to Constitutional Articles by State											
	Rhode Island	South Carol na	South Dakota	Tennessee	Texas	Utah	Vermont	Virginia	Washington	West Virginia	Wisconsin	Wyoming
6. Colleges or universities were granted corporate rights and powers by special act of the legislature.												
7. Provisions for bequests, donations, and endowments were in force. (Endowment funds may be invested[a]; Limitation on amount of estate the college may receive[b]; Lands and monies must be restricted to objects for which donated[c]; Restriction placed on endowments from state.[d])												
8. Miscellaneous provisions were in force. (Faculty may hold political office[a]; State to encourage private institutions[b]; Limitation on real estate holdings[c]; Private institution may join state system of higher education[d]; Students do not lose voting residence by attendance at a college.[e])		Art. 2 Sec. 7[e]										

Appropriation of public money or donation of property by the state or any political subdivision to any educational institution controlled by a sectarian denomination was prohibited. This statement was closely related to the preceding statement; however, the constitutions of Arizona, California, Colorado, and New Mexico contained articles for both statements. Eight of the states contained specific provisions to this item in their constitutional articles. A total of thirty-three states made provision for the restriction of state funds or property to denominational institutions.

Real and personal property used exclusively for non-profit educational purposes was exempted from taxation. Twenty-three states exempted real and personal property of non-profit educational institutions used exclusively for educational purposes. Securities and other income were included under the article exempting real and personal property in California. The state of Georgia stipulated that an educational institution must be open to the general public to enjoy tax-exempt status. The constitution of the state of New York prohibited the legislature from altering or repealing the tax-exempt status of any non-profit educational institution. Revenues or profits from buildings or lands leased by incorporated colleges and universities were subject to taxation. Inheritance taxes and endowment funds not invested in real estate were exempt.

Provisions for other types of tax exemptions were designated. Provisions for other types of tax exemption were contained only in the three states of Alabama, Georgia, and Ohio. The state of Alabama made provision in the constitution for the exemption of educational corporations from payment of a corporate franchise tax. The legislature of Georgia was prohibited from rescinding the tax-exempt status of any institution when the corporate charter provided for the institution to be tax-exempt. The constitution of Ohio contained the only provision in which the property of all corporations was to be forever subject to taxation in the same manner as the property of individuals.

Educational corporations were granted corporate powers through the general laws of the state subject to future amendment, alteration, or repeal by the legislature. Most states made provision for the amendment, alteration, or repeal of a charter under the general law of the legislature relative to corporations in general; however, fifteen states included such a provision directly related to educational corporations.

Colleges or universities were granted corporate rights and powers by special act of the legislature. The three states of California, Connecticut, and Massachusetts had enacted special legislative acts for the purpose of establishing a specific college or university. The approval of the endowment funds and other grants for the establishment of the Leland Stanford Jr. University was confirmed by the legislature of California. The Board of Trustees was granted the power to receive real and personal property wherever located by gift, grant, devise, or bequest for the benefit of the institution. The California legislature was granted the power by the constitutional article to grant corporate powers and privileges to Leland Stanford Jr. University by special legislative act. The article further provided for the legislature to exempt the University from state taxation. The powers and privileges were granted with the stipulation that California residents were not to be charged tuition fees unless authorized by an act of the state legislature. (The legislature had later provided for the charging of tuition rates deemed necessary by the University, Calif. Educ. Code, § 30002L) The California School of Mechanic Arts, the California Academy of Sciences, and Cogswell Polytechnical College were exempted, by separate special acts of the legislature, from paying property tax; however, it was stipulated that the trustees of the institutions were to annually report all proceedings and financial accounts to the Governor.

The charter of Yale College was confirmed by the General Assembly of Connecticut by special article contained in the state constitution. The article contained a statement that the charter had been modified by agreement of the corporation of Yale College and the state of Connecticut. (Whenever a corporate charter has been granted and the state has not reserved the power to alter, amend, or revoke the charter, the state must gain the consent of the corporate body for the charter modification.)

The President and Fellows of Harvard College were confirmed by the General Assembly of Massachusetts by special act. All rights, powers, immunities, and privileges previously held by the president or fellows of the college were confirmed along with all the legacies, gifts, bequests, and conveyances which remained in accordance with the true intent of the donors.

Provisions for bequests, donations, and endowments were in force. The references for such provisions were limited to the five states of

Illinois, Maine, Michigan, Mississippi, and Ohio. A constitutional article of Illinois provided that lands or monies received by colleges, seminaries, or universities by donation or grant must be applied to the objects for which conveyed. The Maine legislature was to encourage colleges and seminaries of learning in the state. Literary institutions were, however, prohibited from receiving endowment funds from the state unless the state held the power to alter, limit, or restrain the powers of the literary institution. The right to invest endowment funds held by institutions of higher learning for educational purposes was provided by the constitution of Michigan. The constitution of Mississippi contained a provision which made it illegal for a man to bequest more than one-third of his estate to any educational institution if he was survived by a wife or a child, or any descendants of the child. The principal of all funds granted or entrusted to the state of Ohio for educational or religious purposes was to be faithfully applied to the objects of the original grants and preserved without the principal being diminished in any manner.

Miscellaneous provisions were in force. The constitutions of each of the five states of Louisiana, Massachusetts, New Hampshire, Oklahoma, and South Carolina contained an article which was unique to the constitutions of any of the other states. In Massachusetts, the president, professors, and tutors of Harvard College were granted the right to hold a seat in the state Senate or House of Representatives while a member of the college faculty. This was an amended article to the Massachusetts Constitution, Part 2, Chapter 6, Article 2, which had previously prohibited the faculty from holding any seat in the legislature concurrently with their faculty position. The encouragement of private and public institutions was the constitutional charge to the legislators of New Hampshire. Private, denominational institutions of higher learning in Oklahoma were permitted to become coordinated with the state system of higher education under regulations set forth by the Oklahoma State Regents for Higher Education. Non-public institutions of higher learning were restricted from receiving any appropriations of funds from the Regents even though a member of the state system. The state of South Carolina was the only state to clarify the legal residence of students attending institutions of higher learning. The constitutional article held that for purposes of voting, no student was to gain or lose his residence while a student in any college or university.

There were ninety citings extracted for the eight specific statements contained in this section. In some cases, a reference was relevant to two of the statements and were cited accordingly in Table I, pp. 60 ff.

Corporate Provisions

The constitutional provisions for corporations generally were determined to be applicable to non-public institutions of higher learning. This section contained eleven statements extracted from the constitutional articles which were applicable to one or more of the fifty states. The findings related to each of eleven statements under this heading were analyzed in the ensuing section. The references were also compiled according to each of the fifty states in Table II, pp. 73 ff.

TABLE II

PROVISIONS FOR CORPORATIONS CONTAINED IN THE CONSTITUTIONS OF EACH OF THE FIFTY STATES

Constitutional Provisions for Corporations	Citation to Constitutional Article by State											
	Alabama	Alaska	Arizona	Arkansas	California	Colorado	Connecticut	Delaware	Florida	Georgia	Hawaii	Idaho
1. No money may be appropriated by the legislature to aid any corporation.												
2. No money may be appropriated by any municipality or county in aid of any corporation.				Art. 12 Sec. 5								
3. The state may not lend its credit to any corporation.					Art. 4 Sec. 31	Art. 11 Sec. 1			Art. 9 Sec. 10	Art. 7 Ch. 2-56 § 2-5604 ¶IV		Art. 8 Sec. 2
4. Municipalities and counties are prohibited from lending their credit to any corporation.			Art. 9 Sec. 7	Art.12 Sec.5	Art. 4 Sec. 31	Art. 11 Sec. 1		Art. 8 Sec. 8	Art. 9 Sec. 10			Art. 8 Sec. 4
5. State lands may not be donated to any private corporation.	Art. 4 Sec. 99											
6. State lands may not be sold to private corporations for a less amount than to a private individual.	Art. 4 Sec. 99											

TABLE II (continued)

Constitutional Provisions for Corporations	Citation to Constitutional Article by State											
	Alabama	Alaska	Arizona	Arkansas	California	Colorado	Connecticut	Delaware	Florida	Georgia	Hawaii	Idaho
7. The legislature may not pass any special laws creating, extending, amending, or repealing a corporate charter, but shall provide for such by general laws.	Art. 4 Sec. 104			Art. 12 Sec. 6	Art. 12 Sec. 7	Art. 15 Sec. 2&3		Art. 9 Sec. 1				Art. 11 Sec. 2&3
8. Corporations may engage only in that business expressly authorized by the articles of incorporation.	Art. 12 Sec. 233											
9. All corporations have the right to sue and be sued.	Art. 12 Sec. 240											
10. The legislature may not pass any local or special law granting any special or exclusive right, privilege, or immunity to any corporation.			Art. 4 Sec. 19		Art. 4 Sec. 25	Art. 5 Sec. 25						
11. Miscellaneous provisions may be established. Rights of employees of corporation[a]; Liability of corporators for debts[b]; Books of corporation open to investigation by state[c]; Initiation of corporation law suit[d]; No charter to be issued for religious seminary[e]; Legislature may annul any charter, if considered injurious to citizens.[f]					Art. 12 Sec. 16[d]							

TABLE II (continued)

Constitutional Provisions for Corporations	Citation to Constitutional Article by State											
	Illinois	Indiana	Iowa	Kansas	Kentucky	Louisiana	Maine	Maryland	Massa-chusetts	Michigan	Minnesota	Mississippi
1. No money may be appropriated by the legislature to aid any corporation.						Art. 4 Sec. 12						
2. No money may be appropriated by any municipality or county in aid of any corporation.						Art. 4 Sec. 12						
3. The state may not lend its credit to any corporation.	Art. 4 Sec. 20	Art. 11 Sec. 12			Educ. Sec.177	Art. 4 Sec. 12				Art. 9 Sec. 18		Art. 14 Sec. 258
4. Municipalities and counties are prohibited from lending their credit to any corporation.		Art. 10 Sec. 6				Art. 4 Sec. 12						
5. State lands may not be donated to any private corporation.						Art. 4 Sec. 12						Art. 4 Sec. 95
6. State lands may not be sold to private corporations for a less amount than to a private individual.												Art. 4 Sec. 95

TABLE II (continued)

Constitutional Provisions for Corporations	Citation to Constitutional Article by State											
	Illinois	Indiana	Iowa	Kansas	Kentucky	Louisiana	Maine	Maryland	Massa-chusetts	Michigan	Minnesota	Mississippi
7. The legislature may not pass any special laws creating, extending, amending, or repealing a corporate charter, but shall provide for such by general laws.		Art. 11 Sec. 13	Art. 8 Sec. 1&12		Corp. Sec.295	Art. 4 Sec. 4 Art. 13 Sec. 7	Art. IV Pt. 3 Sec. 14	Art. 3 Sec. 48	Amend. Art. 59		Art. 4 Sec. 33 Art. 10 Sec. 2	Art. 4 Sec. 87 Art. 7 Sec. 178
8. Corporations may engage only in that business expressly authorized by the articles of incorporation.					Corp. Sec.192							
9. All corporations have the right to sue and be sued.											Art. 10 Sec. 1	
10. The legislature may not pass any local or special law granting any special or exclusive right, privilege, or immunity to any corporation.	Art. 4 Sec. 22											
11. Miscellaneous provisions may be established. Rights of employees of corporation[a]; Liability of corporators for debts[b]; Books of corporation open to investigation by state[c]; Initiation of corporation law suit[d]; No charter to be issued for religious seminary[e]; Legislature may annul any charter, if considered injurious to citizens.[f]												Art. 7 Sec.179[a]

TABLE II (continued)

Constitutional Provisions for Corporations	Citation to Constitutional Article by State												
	Missouri	Montana	Nebraska	Nevada	New Hampshire	New Jersey	New Mexico	New York	North Carolina	North Dakota	Ohio	Oklahoma	Oregon
1. No money may be appropriated by the legislature to aid any corporation.				Art. 8 Sec. 9	Part Second Art. 5							Art. 10 Sec. 15	
2. No money may be appropriated by any municipality or county in aid of any corporation.	Art. 6 Sec. 23				Part Second Art. 5			Art. 8 Sec. 1				Art. 10 Sec. 17	
3. The state may not lend its credit to any corporation.	Art. 3 Sec. 39	Art. 13 Sec. 1		Art. 8 Sec. 9	Part Second Art. 5		Art. 9 Sec. 14					Art. 10 Sec. 15	
4. Municipalities and counties are prohibited from lending their credit to any corporation.		Art. 13 Sec. 1			Part Second Art. 5		Art. 9 Sec. 14	Art. 8 Sec. 1				Art. 10 Sec. 17	
5. State lands may not be donated to any private corporation.			Art. 3 Sec. 21										
6. State lands may not be sold to private corporations for a less amount than to a private individual.													

TABLE II (continued)

Constitutional Provisions for Corporations	Citation to Constitutional Article by State												
	Missouri	Montana	Nebraska	Nevada	New Hampshire	New Jersey	New Mexico	New York	North Carolina	North Dakota	Ohio	Oklahoma	Oregon
7. The legislature may not pass any special laws creating, extending, amending, or repealing a corporate charter, but shall provide for such by general laws.	Art. 11 Sec. 2	Art. 15 Sec. 3		Art. 8 Sec. 1				Art. 10 Sec. 1	Art. 8 Sec. 1	Art. 7 Sec.131 Sec.133	Art. 13 Sec. 1	Art. 9 Sec. 38 Sec. 47	Art.11 Sec. 2
8. Corporations may engage only in that business expressly authorized by the articles of incorporation.	Art. 11 Sec. 5									Art. 7 Sec.137			
9. All corporations have the right to sue and be sued.		Art. 15 Sec. 18	Art. 12 Sec. 3	Art. 8 Sec. 5				Art. 10 Sec. 4	Art. 8 Sec. 3				
10. The legislature may not pass any local or special law granting any special or exclusive right, privilege, or immunity to any corporation.	Art. 3 Sec. 40	Art. 5 Sec. 26	Art. 3 Sec. 18			Art. 4 Sec. 7 Par. 9		Art. 3 Sec. 17		Art. 2 Sec. 69			
11. Miscellaneous provisions may be established. Rights of employees of corporation[a]; Liability of corporators for debts[b]; Books of corporation open to investigation by state[c]; Initiation of corporation law suit[d]; No charter to be issued for religious seminary[e]; Legislature may annul any charter, if considered injurious to citizens.[f]		Art. 15 Sec. 1[f]		Art. 8 Sec. 3[b]								Art. 2 Sec. 28[c]	

TABLE II (continued)

Constitutional Provisions for Corporations	Citation to Constitutional Article by State												
	Pennsylvania	Rhode Island	South Carolina	South Dakota	Tennessee	Texas	Utah	Vermont	Virginia	Washington	West Virginia	Wisconsin	Wyoming
1. No money may be appropriated by the legislature to aid any corporation.						Art.3 Sec. 51							
2. No money may be appropriated by any municipality or county in aid of any corporation.	Art. 9 Sec. 7					Art. 3 Sec. 52				Art. 8 Sec. 7			
3. The state may not lend its credit to any corporation.	Art. 9 Sec. 6		Art. 10 Sec. 6		Art. 2 Sec. 31	Art. 3 Sec. 50	Art. 6 Sec. 31		Art. 13 Sec.185				
4. Municipalities and counties are prohibited from lending their credit to any corporation.	Art. 9 Sec. 7					Art. 3 Sec. 52	Art. 6 Sec. 31		Art. 13 Sec.185	Art. 8 Sec. 7			
5. State lands may not be donated to any private corporation.			Art. 3 Sec. 1										
6. State lands may not be sold to private corporations for a less amount than to a private individual.			Art. 3 Sec. 1										

TABLE II (continued)

Constitutional Provisions for Corporations	Citation to Constitutional Article by State												
	Pennsylvania	Rhode Island	South Carolina	South Dakota	Tennessee	Texas	Utah	Vermont	Virginia	Washington	West Virginia	Wisconsin	Wyoming
7. The legislature may not pass any special laws creating, extending, amending, or repealing a corporate charter, but shall provide for such by general laws.	Art. 3 Sec. 7	Amend. 9 Sec. 1	Art. 9 Sec. 2	Art. 17 Sec. 1	Art. 11 Sec. 8	Art. 12 Sec. 1	Art. 12 Sec. 1	Ch. 2 Sec. 65	Art. 10 Sec.154	Art. 12 Sec. 1&3	Art. 11 Sec. 1	Art. 11 Sec. 1	
8. Corporations may engage only in that business expressly authorized by the articles of incorporation.	Art. 16 Sec. 6		Art. 9 Sec. 12	Art. 17 Sec. 7			Art. 12 Sec. 10						
9. All corporations have the right to sue and be sued.													
10. The legislature may not pass any local or special law granting any special or exclusive right, privilege, or immunity to any corporation.	Art. 3 Sec. 7			Art. 3 Sec. 23						Art. 2 Sec. 28	Art. 4 Sec. 31		Art. 3 Sec.27
11. Miscellaneous provisions may be established. Rights of employees of corporation[a]; Liability of corporators for debts[b]; Books of corporation open to investigation by state[c]; Initiation of corporation law suit[d]; No charter to be issued for religious seminary[e]; Legislature may annul any charter, if considered injurious to citizens.[f]	Art. 16 Sec. 10[f]			Art. 17 Sec. 9[f]							Art. 6 Sec. 47[e]		

No money may be appropriated by the legislature to aid any corporation, and no money may be appropriated by any county or municipality in aid of any corporation. Five states prohibited the legislature from appropriating any money to aid corporations; whereas, nine states restricted any such appropriation by a county or municipality. The state of Nevada excepted corporations formed for educational purposes from its limitation on the state providing aid to any corporation.

The state may not lend its credit to any corporation, and municipalities and counties are prohibited from lending their credit to any corporation. Nineteen states prohibited the state from lending its credit to any corporation, and fifteen states had placed the restriction upon the counties and municipalities. Fourteen of the above states contained restrictions for both the state and the counties or municipalities. Corporations formed for educational purposes were exempted from such prohibition with reference to the credit of the state.

State lands may not be donated to any private corporation. Provisions under this statement were contained in but five state constitutions; namely, Alabama, Louisiana, Mississippi, Nebraska, and South Carolina.

State lands may not be sold to private corporations for less amount than to a private individual. The states of Alabama, Mississippi, and South Carolina were the only states to prohibit the sale of state lands to private corporations for a price lower than that for which a private individual could purchase the same land.

The legislature may not pass any special laws creating, extending, amending, or repealing a corporate charter, but shall provide for such by general laws. Thirty-five states had prohibited the state from passing any special laws which created, amended, or repealed the corporate charter of any corporation. General laws which treated a class or group of corporations similarly were considered the appropriate legislative action to follow. In North Carolina, the General Assembly held the power to repeal a charter by special legislative act. The state of South Carolina provided that the General Assembly may allow a bill for the creation of a special charter to be introduced on a two-thirds vote on the resolution. The resolution was then to be passed by a vote of the General Assembly in the same manner as all other bills. The legislature of Virginia was provided the power to amend or repeal all charters at any time by special act.

Corporations may engage only in that business expressly authorized by the articles of incorporation. Eight states specifically provided for the restriction of the business of any corporation to that business authorized in its charter. Kentucky included the limitation that property in excess of actual needs could not be held for more than five years.

All corporations have the right to sue and be sued. The power to sue and be sued was generally found in the statutes of the state; however, the states of Alabama, Minnesota, Montana, Nebraska, Nevada, New York, and North Carolina made such provision in the constitution.

The legislature may not pass any local or special law granting any special or exclusive right, privilege, or immunity to any corporation.

Fifteen states contained provisions in their constitutions which prohibited the state from passing any special law granting special or exclusive rights, privileges, or immunities to any corporation. It was noted that ten of the states had also provided for the prohibition of special laws in a prior statement with regard to the creation, extension, amendment, or repeal of a corporate charter.

Miscellaneous provisions may be established. Eight state constitutions contained articles which were not applicable to any prior statements but were pertinent generally to educational institutions. The political boundaries within which legal action was to be initiated against a corporation was specified in the California constitution. A provision contained in the Mississippi constitution was unique; the social, civil, and political rights of the employees were to be protected from any interference by the corporation through legislative action. Corporators in the state of Nevada were not to be held liable for the debts and liabilities of the corporation. The records, books, and files of all Oklahoma corporations were to be subject to the visitorial and inquisitorial powers of the state.

The states of Montana, Pennsylvania, and South Dakota contained a provision whereby the legislature had the power to alter, revise, or annul any charter if deemed to be injurious to the citizens of the state. Churches and religious seminaries were prohibited from receiving a charter of incorporation in the state of West Virginia.

In summary, a total of 228 references were extracted and tabulated from the constitutions of the fifty states which related to non-public institutions of higher learning. These constitutional articles provided the legal framework upon which all statutory law was to be developed.

II. STATE STATUTORY REFERENCES TO NON-PUBLIC INSTITUTIONS OF HIGHER LEARNING

The statutes of all of the fifty states were surveyed for the purpose of locating references deemed pertinent to the determination of the legal status of non-public institutions of higher learning in substantive law. All references were classified under six major headings: (1) corporate powers and liabilities, (2) tax exemptions, (3) state: academic provisions, (4) scholarships, loans, and other student aids, (5) rights and responsibilities of students, and (6) miscellaneous provisions. This section reported all the pertinent references to non-public institutions of higher learning contained in the statutes of each of the fifty states.

The corporate status of non-public colleges and universities was determined to be twofold in nature. First, institutions of higher learning were generally incorporated under a non-profit or non-stock corporation act. Such acts provided an educational institution the same general powers for conducting its operation as enjoyed by non-educational institutions incorporated under the same act. Examples of general powers granted all non-profit corporations were the power to; (a) sue and be sued, (b) acquire and hold real and personal property, (c) increase and diminish the number of trustees, and (d) to change its corporate name. Since the provisions of the incorporation acts for non-public institutions were similar in the majority of the fifty states, this aspect of the study was treated under a separate heading at the end of this chapter. Secondly, several states had provided for acts of incorporation specifically related to educational institutions. The method of establishing an incorporated educational institution, the authorization to exercise specific educational powers, rights, and responsibilities, and the procedure for merger or dissolution were contained in such acts. The provisions of those states which provided for the incorporation of educational institutions by specific educational corporation acts were treated under a special category related to the not-for-profit corporation acts mentioned above.

Every state contained at least one reference to non-public institutions of higher learning. The pertinent statutory provisions were reported for each state under the six major headings.

Alabama

Corporate status. Existing educational institutions incorporated under special legislative act or under general laws of the state were granted the power to amend their charters. The trustees were required to adopt a resolution for such amendment and the persons or organizations electing the trustees were required to approve the resolution. The signature of the governor of the state made the amendment an official part of the charter.[1] The powers which were permitted to be included in an amendment were (a) to change the name of the institution, (b) to confer degrees and grant diplomas, (c) to hold real and personal property, (d) to borrow money, (e) to mortgage or pledge property of the corporation, and (f) to change the number and manner of electing or appointing trustees.[2]

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[1] Code of Ala., Tit. 10, § 15b (1958).

Tax exemptions. Property of corporations or associations organized for the social or literary advancement of its members and in connection with any college or university was exempt from all state, county, and municipal taxation. Any activities conducted for pecuniary profit were prohibited.[3] All property owned and used for the purpose of housing students, members of the faculty, or other employees of the college was exempt from taxation. All property owned for the purpose of enlarging the campus or developing a new campus was similarly exempt.[4]

State: academic provisions. The State Board of Education was authorized to determine the rules and regulations governing both the training and the certification of public school teachers. The state Board determined whether a diploma from any institution of higher learning offering programs in teacher education was acceptable toward meeting the requirement for a teaching certificate.[5] The State Board was authorized to contract with two non-public colleges, Tuskegee Institute and MeHarry Medical College, for educational services of Alabama students. The use of tax monies for the contracted educational services was the stated intent of the legislature.[6] The State Superintendent of Education was required to visit all colleges and universities engaged in teacher training for the purpose of observing the programs being offered and explaining the state requirements.[7] Presidents of all colleges, supported in whole or in part by the state, were required to provide instruction as to the nature of alcoholic drinks, tobacco, and other narcotics, and their effect upon the human system. All college grade levels were included for this instruction. The president was responsible for filing a report of his actions whenever called upon by the governor or State Superintendent.[8]

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[2] Ibid., § 158.

[3] Ibid., Tit. 51, § 14 (1).

[4] Ibid., § 14 (2).

[5] Ibid., Tit. 52, § 20.

Scholarships, loans, and other student aid. State financial aid was provided to residents of the state who sought graduate or professional educational training in non-public institutions if the courses were not provided in the state colleges.[9] Twenty-one state scholarships were provided annually for applicants to the Tuskegee Institute School of Nursing.[10]

Alaska

Corporate status. The charter of a corporation was subject to revocation if any concessionaire was allowed to exceed reasonable compensation for providing his goods and services.[11]

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[6] Ibid., § 40(3).

[7] Ibid., § 347.

[8] Ibid., § 536.

[9] Ibid., § 40(1).

[10] Ibid., § 455(2)

[11] Alaska Stat., Tit. 10, Ch. 20, § 10.20.030(B) (1962).

Arizona

Corporate status. The library, philosophical, or chemical apparatus belonging to a debtor, but used by any college or university in the instruction of the students, was exempt from being possessed by the courts in payment of such indebtedness.[12]

Tax exemptions. The property and all the buildings and equipment of a non-profit college was tax-exempt; however, income received from property leased or rented for private purposes was subject to taxation.[13] Educational institutions were not required to file a report on unrelated business income, if the institution maintained a regular program of educational activities on its established site.[14] Corporations operated exclusively for educational purposes were exempt from the corporation tax if none of the earnings benefited any private individual.[15]

Arkansas

Corporate status. An incorporated educational institution was required to have its educational purpose explicitly stated in the charter and was prohibited from diverting the funds of the institution to any other purposes without authorization from the corporators.[16] Educational corporations had the power to: (a) fill vacancies on the Board of Trustees, (b) cooperate with other educational institutions in the establishment and maintenance of departments which they may agree to correlate, (c) appoint all officers and instructors and set their compensation, and (d) delegate its power to the president of the institution or to an executive committee.[17] Gifts, bequests, or devises made to the institution for particular purposes were not to be used for any other purposes, unless found to be impossible or impractical to execute.[18] Incorporated colleges and universities were granted the power to confer degrees and grant the diplomas and honors conferred by similar reputable institutions of higher learning.[19] One year of residence study was required prior to the granting of any degree to a student of the college. A violation of this requirement by the president or faculty of a college was considered a misdemeanor.[20] Charters of incorporation of institutions of higher learning were granted by the State Board of Education. Seminaries were allowed to be incorporated, but were not authorized to confer collegiate or university degrees.[21] The trustees were granted power to borrow money for the construction of facilities according to its corporate purposes and to become indebted through bonds, or promissory notes.[22]

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[12] Ariz. Rev. Stat., § 33-1127.

[13] *Ibid.*, § 42-271.

[14] *Ibid.*, § 43-144.

[15] *Ibid.*, § 43-147.

[16] Ark. Stat. Ann., § 64-1402 (1947).

Tax exemptions. Educational corporations were exempt from all tax on income if none of the earnings benefited any private individual.[23]

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[17] Ibid., § 64-1405.

[18] Ibid., § 64-1406.

[19] Ibid., § 64-1407.

[20] Ibid., § 64-1408.

[21] Ibid., §§ 64-1409 - 64-1410.

[22] Ibid., § 64-1415.

[23] Ibid., § 84-2006.

State: academic provisions. Incorporated colleges and universities were required to ascertain whether a student passed a course in American history and civil government prior to conferring a degree on such student.[24]

Scholarships, loans, and other student aid. Financial aid for a blind student was provided by the state for the student to attend any institution of higher learning if the financial need was approved by the state.[25]

Rights and responsibilities of students. It was considered a misdemeanor to entice any college student into gambling or provide him with intoxicating liquor. The voters in an incorporated city or village were able to prohibit billiard rooms, bowling alleys, race courses, gambling devices, brothels, theatrical or circus exhibitions, or liquor stores from locating within three miles of a college campus if the institution was located within the city limits.

California

Corporate status. All honorary degrees were required to have the word "honorary" plainly stated thereon. The power to confer such degrees was limited to institutions which were accredited by a national or regional accrediting agency or which received authorization from the State Superintendent of Public Instruction. Three-year and four-year law schools were exempted from the above requirements.[27] Educational corporations, not regionally or nationally accredited, were required to file an annual report with the Superintendent of Public Instruction.[28] A private educational institution was prohibited from using the seal of the state of California or any facsimile thereof on diplomas issued by the institution.[29] It was the declared intent of the legislature to encourage privately supported education as well as public institutions. The need for educational services of youth in California could not be met unless private institutions were continued.[30] Organizations and societies were able to consolidate two or more colleges for greater efficiency, but the total number of trustees was not to be reduced for a period of five years following the consolidation. The new institution was to file an annual business and financial report with the parent lodge or association. All the property plus the powers and privileges authorized by the charter of the former institutions were to be transferred to the new institution.[31]

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[24] Ibid., §80-1615. [25] Ibid., §§80-2428 - 80-2429.

[26] Ibid., §64-1414.

[27] West's Ann. Educ. Code, §§29006 - 29007.1.

Tax exemptions. A special enactment exempted all property acquired by colleges and universities during the year 1964 from any tax or penalty and returned any payments made erroneously.[32]

State: academic provisions. A provision was made which enabled any college or university accredited by the State Board of Education as a teacher education institution to enter into agreements with local school districts for the purpose of providing college students with student teaching experiences. Instruction in the Constitution of the United States and of California, in American history, and in the history and civics of California was required in all non-public colleges and universities. Students who completed the course and passed the examination satisfactorily were not required to take it again even though transferring to another institution.[33] Colleges or universities accredited for teacher training were permitted to provide correspondence courses to local school districts for the use of regular students and veterans.[34] All courses of education leading to an educational, professional, or vocational objective required the prior approval of the State Superintendent of Public Instruction.[35] In order to provide a course for the purpose of teaching a foreign language, it was necessary to receive a license from the State Board of Education. Any course licensed by the State Board was subject to visitation by the State Department of Education.[36] The Commission held the power to enter into and terminate contracts for research with colleges and universities upon the approval of the Director of Finance.[37]

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[28] *Ibid*., § 29009.

[29] *Ibid*., § 29016.

[30] *Ibid*., § 29022.

[31] *Ibid*., §§ 29051 - 29059.

[32] West's Ann. Revenue and Taxation Code, §§ 265 - 266 and § 269.

Scholarships, loans, and other student aid. A blind student enrolled in a degree program of a college was eligible to receive financial aid from the state for a reader.[38]

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[33] West's Ann. Educ. Code, § 152; §§ 7901 - 7902 and § 7904.

[34] *Ibid.*, § 8301.

[35] *Ibid.*, § 29007.5.

[36] *Ibid.*, § 30052; §§ 30057 - 30058.

[37] West's Ann. Govt. Code, § 10340.

[38] *Ibid.*, § 10651.

Rights and responsibilities of students. Personal information concerning a student was not to be given out by any college official except by judicial process or unless the person was (a) a parent or guardian, (b) a person designated in writing by the pupil, if a minor, (c) officials of an institution where the student has attended or plans to attend, (d) a governmental representative conducting official business, or (e) a guidance agency of which the student is a client.[39] Hazing was prohibited,and conspiring to or participating in such behavior was considered a misdemeanor.[40]

Miscellaneous provisions. The Federal act which provided funds for construction, rehabilitation, or improvement of needed academic and related facilities for both public and non-public institutions of higher learning was approved by the state. A Coordinating Council was designated to administer the federal funds. The Council included three representatives from non-public institutions of higher learning.[41] Leland Stanford Jr. University was granted full corporate powers and other rights and privileges under these enactments.[42] The flags of the United States and of California were to be prominently displayed at the entrance to every college and university. Bands and orchestras of institutions of higher learning were prohibited from furnishing music at any event where an admission was charged by an individual or organization operating for profit.[43] The sale of intoxicating liquor was prohibited within one and one-half miles of university grounds. LaVerne College, a non-public institution in Los Angeles County, was included in a special enactment in regard to liquor sales.[44] Persons who drive on the campus roadways were placed under the authority of the college or university and were subject to the regulations and penalties imposed for any violations.[45]

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[39] West's Ann. Educ. Code, § 10751.

[40] Ibid., §§ 10851 - 10852.

[41] Ibid., § 22700; § 22750 and § 22752.

[42] Ibid., §§ 30001 - 30003; § 300021.

Colorado

Corporate status. Private colleges and universities, seminaries, and Bible colleges were authorized to confer degrees if the courses of study met the prescribed standards of the state.[46]

Tax exemptions. Colleges and universities conducted exclusively as non-profit institutions were exempted from the real and personal property tax and the corporate tax on net income.[47]

State: academic provisions. Every person employed to teach in a college or university in the state was required to sign an oath of allegiance before assuming his teaching responsibilities. College or university officials were guilty of a misdemeanor if a teacher was allowed to teach without taking the oath.[48] The State Board of Teacher

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[43] West's Ann. Govt. Code, § 431 and § 6650.

[44] *Ibid.*, §§ 172a, 172g, and 172h. [45] West's Ann. Vehicle Code, § 2113.

[46] Colo. 1965 Session Law, Ch. 267.

[47] Colo. Rev. Stat., § 137-1-3; § 138-1-8 (1963).

[48] *Ibid.*, § 123-17-7 and § 123-17-8.

Certification was responsible for investigating and publishing its findings as to those institutions of higher learning whose teacher preparation program met the state standards.[49]

Connecticut

Corporate status. The power to confer degrees was authorized for each incorporated institution by acts of the General Assembly. A preliminary approval of the facilities, program, faculty,and finances was required from the State Board of Education prior to the formal action of the General Assembly granting such power.[50] The powers or privileges which were held by corporations specially chartered prior to 1961 were to remain in effect even though in conflict with the current non-profit corporation act.[51]

Tax exemptions. College property was held exempt from taxation. Estate funds held by non-public institutions including the Connecticut College for Women, Trinity College, Wesleyan University, and the President and Fellows of Yale College were exempted from taxation.[52] Local taxes were to be assessed upon the property of educational corporations when leased to persons for other than religious, educational, or charitable purposes; however, the tax assessment was upon the person leasing the property and not the college or university.[53] Meals and other food products sold in student cafeterias, dining halls, and fraternity or sorority houses were exempt from the sales tax.[54]

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[49] Ibid., §123-1-10.

[50] Conn. Gen. Stat. Ann., §10-6 (1958). [51] Ibid., §33-499.

[52] Ibid., §12-81. [53] Ibid., §§ 12-66 and 12-89.

Rights and responsibilities of students. The giving of credit to any minor student of any college or university without the written consent of the parent or guardian was prohibited.[55]

Miscellaneous provisions. The state librarian was authorized to transfer certain books and pamphlets to Yale University or any other university or college in the state.[56] Dormitories were required to have one window in each room which opened directly upon a court, street, or yard, and the windows were to be so located as to allow the light to shine on at least one-eighth of the room.[57] Faculty of several non-public institutions were appointed as members of the Board of Control of the Connecticut Agriculture Experiment Station and of the State Geological and Natural History Survey. Appointments were to be made by the college president of each institution.[58]

Delaware

Corporate status. The power to confer academic or honorary degrees was granted by the State Board of Education. Institutions were required to be conducting a bona fide program of studies and to have financial resources sufficient to carry out the institutional program.[59]

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[54] *Ibid.*, § 12-412.

[55] *Ibid.*, § 53-343.

[56] *Ibid.*, § 11-3.

[57] *Ibid.*, § 19-359.

[58] *Ibid.*, § 22-79; § 24-1.

[59] Del. Code, Tit. 8, § 125 (1953).

Tax exemptions. An annual report containing all facts which made the institution tax-exempt was filed with the Secretary of State.[60] All property used exclusively for the educational purposes of the college was not subject to taxation by the state or any political subdivision thereof.[61] Real property held by fraternities of incorporated colleges was not liable to taxation up to $10,000.[62]

State: academic provisions. The Governor was authorized to set one day aside each year for Arbor and Bird Day and was further authorized to request its observance in all colleges and universities by suitable exercises in recognition thereof.[63]

Miscellaneous provisions. Colleges and universities were authorized to keep pure grain alcohol when used strictly for scientific work.[64] Officers of colleges were exempt from jury duty while in the discharge of their duties.[65] All institutions of higher learning were required to be closed during the day of any general election.[66]

Florida

Tax exemptions. The property of educational institutions was exempt from taxation if used for the purpose for which it was organized. College-owned buildings in which not more than 75 per cent of the floor space was rented were exempt from taxation if the profits were used for the educational purposes of the college.[67]

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[60] _Ibid_., Tit. 8, § 502.

[61] _Ibid_., Tit. 9, § 8103.

[62] _Ibid_., Tit. 9, § 8105.

[63] _Ibid_., Tit. 29, § 2108.

[64] _Ibid_., Tit. 4, § 723.

[65] _Ibid_., Tit. 10, § 4504.

[66] _Ibid_., Tit. 14, § 4104.

[67] Fla. Code Ann., Tit. 13, § 192.06.

State: academic provisions. Each of the institutions of higher learning offering a teacher education program was authorized to designate one representative to serve on the Florida Teacher Education Advisory Council for the purpose of aiding in the development of desirable standards for teacher education.[68] The first approved medical school in the state was to receive $4,500 per student enrolled each year.[69]

Scholarships, loans, and other student aids. Students desiring to prepare themselves for teaching were granted state scholarships allowing them to attend any institution approved by the state for teacher education. The college was required to approve a course of studies for the student which would meet the state certification standards.[70]

Rights and responsibilities of students. Students were permitted to sell penants, badges, insignias, and novelties without a license upon the approval of the college authorities or the Athletic Association.[71] Secret societies were allowed to exist on campuses of private colleges and universities.[72] Students of either sex between the ages of sixteen and twenty-one were authorized to legally make and execute promissory notes in borrowing money for educational purposes. The loan interest rate was not to exceed 6 per cent or the promissory note was declared void.[73]

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[68] Ibid., Tit. 15, § 231.10.

[69] Ibid., Tit. 15, § 242.62.

[70] Ibid., Tit. 15, § 239.41.

[71] Ibid., Tit. 13, § 205.19.

[72] Ibid., Tit. 15, § 232.42.

[73] Ibid., Tit. 42, § 743.05.

Miscellaneous provisions. The officers of colleges and universities were exempt from jury duty.[74] The official flag of Florida was to be flown daily upon a suitable flagstaff.[75] Licenses were not required by an institution of higher learning for housing students in a dormitory or for providing food services for students if maintained by the college or university.[76] The state racing commission was authorized to extend the period for horse or dog racing and jai-alai for the purpose of charity for one or two days each year. The University of Miami, Jacksonville University, Nova University of Advanced Technology, and all non-public institutions were to receive a portion of the funds derived from the special racing or jai-alai days.[77]

Georgia

Corporate status. Standards for establishing a college or university were prescribed by the State Board of Education. The power to confer degrees was not granted unless the State Board approved.[78]

Tax exemption. Intangible personal property of educational institutions was exempt if none of the profits benefited any private individual. All buildings used for the educational purposes of the institution were exempt from taxation providing it was open to the general public.[79]

State: academic provisions. Programs for the education of veterans were authorized in private colleges and universities when arranged through the State Department of Veterans Service.[80]

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[74] Ibid., Tit. 4, § 16-501.

[75] Ibid., Tit. 15, § 228.06.

[76] Ibid., Tit. 31, § 509.241.

[77] Ibid., Tit. 31, § 550.03.

[78] Ga. Code Ann., § 32-415.

[79] Ibid., § 92-130; § 92-201.

Miscellaneous provisions. The use of pure alcohol for mechanical, medicinal, and scientific purposes was permitted; colleges were required to hold a certificate from the county for such purposes.[81] Alcoholic beverages were not to be sold within two hundred yards of any college campus.[82] A person was restricted from devising more than one-third of his estate to any college or university if a wife or child or any descendants of the child were still living.[83]

Hawaii

Tax exemptions. Corporations organized solely for educational purposes were exempt from the tax on income. All property and buildings used exclusively for educational purposes were exempt from taxation, including housing on the campus for employed personnel.[84]

Scholarships, loans, and other student aids. The state was authorized to contract with the United Student Aid Funds, Inc. for the purpose of endorsement of loan funds to students. Four-year colleges and universities interested in participating in the program were required to be accredited by the Western College Association and to follow the rules and regulations established by the Department of Budget and Finance.[85]

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[80] Ibid., § 78-405a.

[81] Ibid., § 58-401.

[82] Ibid., § 58-1029.

[83] Ibid., § 113-107.

[84] Rev. Laws of Hawaii, Tit. 16, § 121-6 (1963 Supp.).

[85] Ibid., Tit. 6, § 44b-1 and § 44b-3.

Idaho

Corporate status. All incorporated institutions of higher learning were prohibited from requiring any religious test of any person applying for admission.[86]

Tax exemptions. Property used exclusively for educational purposes was exempt if no profit or rental inured to the benefit of the owner.[87]

Illinois

Corporate status. The trustees of any college or university planning to discontinue operation were required to make adequate provision for the maintenance of the student records within the state. The Superintendent of Instruction was authorized to serve this function if designated by the trustees.[88] Any college or university incorporated under the laws of the state was permitted to erect buildings on public lands vacated by a municipality. The control of the grounds was placed under the authority of the institution through its articles of incorporation which superceded any municipal acts for such control.[89] Institutions of higher learning were required to be approved by the Superintendent of Public Instruction prior to their granting any degrees.[90] An Advisory Council of degree-granting institutions was established by the Governor for a period of seven years. Two of the seven members of the Council were to represent the private institutions for a period not less than five years.[91]

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[86] Idaho Code, § 33-3909.

[87] Ibid., § 63-1051.

[88] Smith-Hurd Ann., Ch. 144, § 5b (1963).

[89] Ibid., Ch. 144, § 12.

[90] Ibid., Ch. 144, §§ 231 - 237.

Tax exemptions. Retail purchases of tangible personal property by colleges and universities were exempt from the taxes generally imposed on such items. All real property was exempted for institutions of higher learning as well.[92]

State: academic provisions. The president of every college, university, and seminary was required to submit any report deemed necessary by the Superintendent of Public Instruction in order to keep the General Assembly informed of the current status of higher education in the state.[93]

Rights and responsibilities of students. Hazing was described as any pastime or amusement which held a student up to ridicule for the pleasure of others and was prohibited. If a student was injured, the offense was deemed a misdemeanor.[94]

Miscellaneous provisions. Boxing or sparring exhibitions and wrestling matches conducted by any college or university in its own building were exempt from the license requirement of the Athletic Commission.[95] All dormitories more than two stories high were required to have at least one fire escape for every fifty persons on each additional floor.[96]

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[91] _Ibid_., Ch. 144, §242.

[92] _Ibid_., Ch. 120, §439.3; §500.1.

[93] _Ibid_., Ch. 122, §2-3.23.

[94] _Ibid_., Ch. 144, §§221 - 222.

[95] _Ibid_., Ch. 10 4/5, §8.

[96] _Ibid_., Ch. 55 1/2, §1.

Indiana

Corporate status. The Board of Trustees was authorized to elect the president of the institution for a period not to exceed six years.[97] Colleges and universities were permitted to establish all departments considered appropriate to the institution and confer the appropriate degrees.[98] Colleges incorporated prior to the adoption of the state constitution were authorized to borrow money and to secure the loan by mortgage of its property.[99] The Board of Trustees was not to be appointed or elected by another association if the college presently received any state aid.[100] Limitations on the amount of property colleges or universities could hold as a result of their charter were removed if the institution accepted the provisions of the present incorporation act.[101] Counties of specified populations were permitted to aid incorporated educational institutions providing the control of the institution did not come under the control of any sectarian or religious association. Knox County was authorized to levy a county tax for the support of Vincennes University, but the financial affairs of the University were subject to examination by the state auditor.[102]

Tax exemption. Buildings used exclusively for educational purposes were exempt from taxation. Real estate not exceeding eight hundred acres and personal property were also tax-exempt.[103] Contributions, tuition fees, and other earnings were exempt from the gross income tax.[104]

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[97] Burn's Ind. Stat. Ann., § 25-3206.

[98] Ibid., § 25-3207; § 25-3240.

[99] Ibid., § 25-3225.

[100] Ibid., § 25-3241.

[101] Ibid., § 25-3243.

[102] Ibid., §§ 25-3406 - 25-3425; § 25-3249; §25-3431.

Rights and responsibilities of students. Any person who willfully marks, mutilates, defaces, or otherwise injures any materials contained in a college library was subject to conviction under the penal code.[105]

Miscellaneous provisions. College and seminary officials were charged with the responsibility to insure that all doors of the buildings swing outward; refusal or negligence of the officials to insure such subjected the officials to possible fine and imprisonment.[106] Boxing or sparring exhibitions and wrestling matches conducted by a college or university were exempt from the requirement of the Athletic Commission to hold a license.[107]

Iowa

Corporate status. The state was prohibited from appropriating funds to any institution not completely under the control of the state.[108] The trustees of an institution ceasing to operate were required to deposit the complete records of all of its students with the registrar of the State University of Iowa within twelve months of such dissolution. Requests for transcripts by the students from the defunct institution were to be provided by the registrar of the State University. Former officials of defunct institutions were also permitted to deposit their official records with the registrar at the State University.[109] Non-profit educational corporations were not required to file an annual corporation report or to pay an annual filing fee.[110] The annual meeting of educational corporations was permitted to be held outside of the state if the membership consisted of religious leaders or delegates who attended an annual synod, conference, or council meeting.[111] The board of trustees was authorized to take charge of any endowment in accordance with regulations established by the body who elected or appointed them.[112]

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[103] *Ibid*., §64-201.

[104] *Ibid*., § 64-2606.

[105] *Ibid*., §10-4517.

[106] *Ibid*., § 10-4907.

[107] *Ibid*., §64-201.

[108] Iowa Code Ann., Tit. 1, §3.14.

Tax exemptions. Real estate was tax-exempt on all property not to exceed 160 acres. Real property held as a part of the institution's endowment funds was subject to assessment for tax purposes. Lands purchased after January 1, 1965 were to be taxed at the same rate as all other property held by corporate bodies incorporated under the same statutory act; claims by educational institutions for a tax-exempt status were required to be filed annually.[113] Property bequeathed or devised to incorporated, non-profit educational institutions was exempt from inheritance tax.[114]

State: academic provisions. College and university libraries were permitted to receive books from the state library for purposes of circulation at no cost except transportation charges.[115] Upon the merger of one or more educational corporations in which the surviving corporation was located in the state of Iowa, a student of the former institution was credited with meeting the one-year residence requirement for graduation in the new institution if the two educational programs were similar.[116]

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[109] Ibid., Tit. 12, §§264.1 - 264.7.

[110] Ibid., Tit. 19, §496.19.

[111] Ibid., Tit. 19, §504.15.

[112] Ibid., Tit. 19, §504.22.

[113] Ibid., Tit. 16, §427.1.

[114] Ibid., Tit. 16, §450.4.

Miscellaneous provisions. Seminaries and colleges were required to meet the state provisions established for the proper number of fire escapes on the various buildings.[117] The entrance doors to all classrooms and assembly halls were to open outward.[118]

Kansas

Corporate status. The president and the professors were held responsible for the enforcement of the rules and regulations enacted by the trustees for the government and discipline of the students. This responsibility included suspension and expulsion of students.[119] The trustees were granted power to confer degrees.[120] The property of educational corporations was permitted to be converted to stock or scholarships by the consent of a majority of stockholders.[121] The trustees were held individually liable if debts were contracted beyond the means of the institution.[122] Certain educational institutions were authorized to establish electric plants for the purpose of furnishing light, heat, and power for their own use. Under specified conditions, the institution was permitted to furnish the same services to the residents of the city in which the college was located; however, the value of the electric plant in excess of the needs of the college was subject to taxation.[123]

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[115] Ibid., Tit. 12, § 303.3(12). [116] Ibid., Tit. 19, § 504.12.

[117] Ibid., Tit. 5, § 103.7. [118] Ibid., Tit. 5, § 103.8.

[119] Kans. Stat. Ann., Corrick, § 17-1401. [120] Ibid., § 17-1402.

[121] Ibid., § 17-1404. [122] Ibid., § 17-1405.

Tax exemptions. All property, monies, and credits were exempt from taxation if used exclusively for the educational purposes of the institution. Property used as an investment, even though the income was used for educational purposes, was not exempt.[124] Institution-owned housing for faculty and single or married students of denominational colleges and universities was tax-exempt.[125]

State: academic provisions. Educational corporations were permitted to procure land, machinery, buildings, and tools for the purposes of mechanical and agricultural operations if a part of the educational program.[126] Every university and college faculty professor and instructor was required to sign a loyalty oath prior to assuming his teaching assignment.[127] Incorporated four-year colleges were permitted to petition the State Superintendent for placement on an accredited list of teacher preparation institutions; the State Superintendent had the power to examine an accredited institution at his pleasure.[128]

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[123] Ibid., §§ 17-1408 - 17-1409

[124] Ibid., § 79-201.

[125] Ibid., § 79-208.

[126] Ibid., § 17-1403.

[127] Ibid., § 21-305.

[128] Ibid., §§ 72-1371 - 72-1372.

Scholarships, loans, and other student aids. The provision for all qualified students to attend institutions of higher learning was considered important to the welfare and security of the state and nation and, consequently, a public purpose. A lack of public facilities and existence of suitable private institutions warranted the issuance of state scholarships to attend any qualified college or university. The cost of providing state scholarships to attend private institutions was held to be less than the provision by the state of comparable facilities and instruction in public institutions.[129]

Kentucky

Corporate status. The trustees held the same rights, civil or penal, against any person intruding on their property as were granted the public property of the county.[130] Any incorporated college held the power to establish adjunct colleges (branch colleges) in the state. The parent institution was authorized to operate the adjunct college and to solicit donations for its establishment and operation. The trustees were empowered to: (a) procure property and erect buildings thereon, (b) appoint and remove the teachers, (c) prescribe the courses of study, (d) confer degrees, and (e) exercise all necessary supervision and control over its operation.[131] The property of any religious society which dissolved became vested in the county seminary; the lack of a county seminary caused the property to be vested in the county court for the benefit of the common schools.[132]

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[129] Ibid., § 72-6801; § 72-6808.

[130] Ky. Rev. Stat., § 273.060.

[131] Ibid., § 273.070 and § 273.080.

Tax exemptions. Non-profit educational institutions were exempt from the levy on income tax.[133]

State: academic provisions. The president of every university and college was required to hold at least two thirty-minute student assemblies each term for the purpose of informing the students of the scientific, social, and moral aspects of alcoholic beverages, stimulants, and narcotics.[134]

Louisiana

Corporate status. The trustees of institutions of higher learning were authorized to confer the degree of Bachelor of Arts and Sciences on its graduates if the college had provided four years of post-secondary education of not less than 180 days. All institutions granted the right to confer degrees prior to 1900 were to retain that right regardless of future legislative action.[135] St. Paul's College, Loyola University, Notre Dame Seminary, St. Joseph's Abbey, South Central College, and DeLise College of New Orleans were granted the power to confer degrees by special enactments of the legislature.[136]

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[132] *Ibid.*, § 273.130.

[133] *Ibid.*, § 141.040.

[134] *Ibid.*, § 158.270.

[135] La. Stat. Ann. - Rev. Stat., Tit. 17, Ch. 10, §§ 2051 - 2052 (1950).

[136] *Ibid.*, § 2072; §§ 2075 - 2077; § 2079; §§ 2081 - 2082.

Tax exemptions. Non-profit educational institutions were exempt from the income tax and the corporate franchise tax if no substantial part of the activities involved carrying on propaganda or attempting to influence legislation.[137] Gifts, legacies, and donations made exclusively to educational institutions were exempt from any gift and inheritance taxes if no earnings inured to the benefit of any person or corporation.[138]

Miscellaneous provisions. Any college or university was authorized to receive pure, grain alcohol tax-free from an industrial alcohol plant for laboratory use if used exclusively for purposes of scientific research.[139]

Maine

Corporate status. The legislature retained the authority to grant each educational institution power to confer degrees. Upon the dissolution of any educational institution, the records of all grades of former students were required to be turned over to the State Department of Education. The Commissioner of Education was required to maintain the records and to provide individual transcripts to former students upon request.[140] Requests for authorization to confer degrees were evaluated by the Commissioner of Education as to: (a) the adequacy of facilities, (b) qualifications of its staff, (c) level of program of studies to be offered, (d) admission policies for students, (e) adequacy of its financial resources, and (f) its general governing policies. The evaluation report with the recommendations of the State Board of Education were then given to the legislature for final action. No institution was eligible to confer degrees until two years after the institution became operational.[141]

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[137] *Ibid.*, Tit. 47, Ch. 1, § 121; Ch. 5, § 608.

[138] *Ibid.*, Ch. 14, § 1204; Ch. 1, § 2402.

[139] *Ibid.*, Tit. 26, Ch. 2, § 423.

[140] Me. Rev. Stat. Ann., Tit. 20, § 2202 (1964).

Scholarships, loans, and other student aids. A system of state scholarships was established, and qualified students receiving such scholarships were free to attend any qualified institution of higher learning whether public or private.[142]

Rights and responsibilities of students. A minor student sixteen years or older held full legal authority to act in his own behalf in securing a loan from the New England Higher Education Assistance Foundation. The student was granted all the rights, powers, and privileges of such act and was subject to the obligations of any person of full age.[143] The presence of a student in a college or university did not establish such institution as his permanent residence for purposes of assessment of a three dollar annual poll tax upon every male resident of the state.[144]

Miscellaneous provisions. Officers of colleges were exempt from serving as jurors.[145] Fees for a diploma or medical degree were valid, but the fee was to be paid into the college treasury and not to any officer of the college.[146] Dormitories were not required to be licensed as a lodging place.[147] Colleges were able to purchase alcohol for laboratory uses only in accordance with the rules and regulations of the State Liquor Commission.[148]

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[141] Ibid., Tit. 20, § 2203.

[142] Ibid., Tit. 20, § 2215.

[143] Ibid., Tit. 33, § 52.

[144] Ibid., Tit. 36, § 1381.

[145] Ibid., Tit. 14, § 1201.

Maryland

Corporate status. Rights, privileges, and property granted by charters issued in the state were not to be impaired by this code.[149] An educational institution planning to dissolve its operation was required to file a legible, true copy of the academic achievements of all former students of the institution during the preceding twenty-five year period with the State Superintendent of Schools. The State Superintendent was responsible for the maintenance of the records and for providing former students with transcripts upon request.[150] Appropriation of funds from the general state school fund to colleges and universities was prohibited.[151] Every solicitor for a non-public school, including colleges but not accredited institutions conducted by a bona fide church organization, was obligated to hold an annual permit issued by the State Superintendent of Schools.[152] Regulation of degrees was considered to be in the public interest to prevent the deception of the public resulting from fraudulent conferring of such degrees; therefore, the law controlling degrees was held to be in the public interest. A degree-granting institution was entitled to confer both academic and honorary degrees, but the honorary degree required the diploma to be clearly marked as honorary. Institutions not conducting instruction in residence were able to qualify as degree-granting institutions by meeting all other requirements and receiving approval of the State Department of Education. Representatives of the State Department of Education were privileged to visit all degree-granting colleges and to examine the books and other records which pertained to the educational activities of the institution. Failure to permit such examination was considered grounds for revocation of the power to confer degrees.[153]

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[146] Ibid., Tit. 20, § 2204. [147] Ibid., Tit. 22, § 2486.

[148] Ibid., Tit. 28, § 55.

[149] Ann. Code of the Pub. Laws of Md., Art. 1, § 4 (1957).

[150] Ibid., Art. 77, Ch. 3, § 25A.

[151] Ibid., Art. 77, Ch. 20, § 215.

[152] Ibid., Art. 77, Ch. 32, § 306.

Tax exemption. The real and personal property of an institution operated exclusively for educational purposes was exempt from assessment by state, county, and local taxation. The property holding was not to exceed one hundred acres.[154]

State: academic provisions. Private institutions were required to file with the Governor, the President of the Senate, and the Speaker of the House a written report specifying what steps had been taken to determine "whether it has reasonable grounds to believe that any subversive persons are in its employ, and what steps, if any, have been or are being taken to terminate such employment," before any appropriation of public funds was to be made.[155]

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[153] Ibid., Art. 77, Ch. 33, §312; §§314 - 315.

[154] Ibid., Art. 81, §9.

Scholarships, loans, and other student aids. The Maryland Higher Education Loan Corporation was authorized to lend funds to residents of the state who were attending or planned to attend any state accredited institution of higher learning.[156] Eleven non-public colleges and Johns Hopkins University were authorized to provide one student from each senatorial district with a state scholarship which provided for free tuition, board, and room. State scholarship recipients were obligated to follow a program for teacher preparation which would lead to a teaching certificate to teach in the public schools of the state. The visitors and governors of Washington College were authorized to establish a department of pedagogy. The visitors and governors granted certificates to teach for two years in the public schools of Maryland. Upon the completion of two years of teaching, a permanent diploma to teach in the state was provided. The permanent diploma was subject to revocation by Washington College. The state was prohibited from impairing the standards for admission for the level of scholarship to be maintained, or for any other rules or regulations of the institutions in the state scholarship program. A scholarship student was not to be denied admission to an institution because of his religious sect, nor was any sectarian course to be required in order to qualify for a degree at such college.[157]

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[155] Ibid., Art. 85A, § 16. [156] Ibid., Art. 43A, § 1.

[157] Ibid., Art. 77, Ch. 27, § 261; §§ 263-265E; § 267; § 272; § 280.

Rights and responsibilities of students. Non-resident students attending any accredited college or university in the state were exempt from registering their automobile in the state if there was a reciprocal arrangement with the non-resident's home state for Maryland students.[158]

Miscellaneous provisions. Intercollegiate boxing held on campus or under the auspices of a college was exempted from the regulations established by the State Athletic Commission.[159]

Massachusetts

Corporate status. Incorporated institutions desiring to amend their charters to permit the granting of degrees were investigated by the Board of Higher Education. Prior to the grant of approval to confer degrees, a public hearing was held following newspaper notice of such hearing. Any institution of higher learning approved to grant degrees was subject to periodic inspections by the Board of Collegiate Authority for a period of twelve years following such approval. The Board of Higher Education held the power to suspend or revoke the power of any institution for failure to meet the standards established by the Board.[160]

State: academic provisions. Every literary, scientific, and professional institution of higher learning was required to complete an annual report for the State Department of Education relative to the courses of study offered, enrollment and number of instructors, tuition cost, and general condition of the institution.[161] The president, professors, and tutors were to endeavor to impress the moral principles of human society upon the minds of the students.[162] All professors were required to sign an oath affirming their support of the Constitutions of the United States and Massachusetts before engaging in any teaching.[163]

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[158] *Ibid.*, Art. 66½, §57. [159] *Ibid.*, Art. 56, §127.

[160] Mass. Gen. Laws Ann., Ch. 69, §§30 and 30A.

Scholarships, loans, and other student aids. A student whose parent was killed in military service was granted funds from the Department of Education toward the cost of attending any institution of higher learning approved by the Commissioner of Education.[164]

Miscellaneous provisions. Recognized colleges were permitted to conduct courses of instruction in boxing and boxing exhibitions; the state minimum age of eighteen years for any participant in boxing was exempted.[165] Officers of colleges were excused from jury duty.[166] Any person who made any false or fraudulent statement in regard to the approval of an incorporated college, university, or professional school or the faculty thereof for advertisement of any services, goods, or processes of treatment was subject to fine and imprisonment.[167]

Michigan

Corporate status. Albion College was incorporated by legislative act which granted the trustees the powers, privileges, and rights of both Wesleyan Seminary and Albion Female College as a result of their merger. All powers of the trustees, including the right to confer degrees, were stipulated. Two Methodist church associations and the alumni were granted power to elect trustees. The State Superintendent of Public Instruction appointed three visitors for the college.[168] An educational institution was to be visited at least once every three years by the State Board of Education. The Board held the power to determine the condition of the college or university and to publish such information. An annual report was required of the trustees by the Board which contained the names of all trustees, officers, and teachers of the institution, the enrollment, the amount of property, and all other information which exhibited the general condition of the college.[169]

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[161] Ibid., Ch. 69, § 4.

[162] Ibid., Ch. 71, § 30.

[163] Ibid., Ch. 71, § 30A.

[164] Ibid., Ch. 69, § 7B.

[165] Ibid., Ch. 147, § 39.

[166] Ibid., Ch. 234, § 1.

[167] Ibid., Ch. 266, § 90.

Tax exemptions. The real and personal property of the college or university was exempt from the tax on property.[170]

State: academic provisions. The signing of a loyalty oath was required of all professors before teaching in any college or university which received any public funds or was exempt from taxation. Any private or denominational college that employed a teacher not signing the oath forfeited its tax-exempt status.[171]

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[168] Mich. Stat. Ann., §§ 15.1841 - 15.1842; §§ 15.1844 - 15.1850.

[169] Ibid., § 21.178.

[170] Ibid., §§ 7.7 and 7.9.

[171] Ibid., §§ 15.701 - 15.702.

Minnesota

Corporate status. The property of a college or university was not liable to attachment or garnishment or sale of any process from a court.[172]

Tax exemptions. All colleges and universities were exempt from taxation. Corporations conducting colleges or universities were exempt from the income and excise taxes if no part of the earnings inured to the benefit of any individual or stockholder.[173] Real property conveyed to any tax-exempt institution of higher learning with the stipulation for the payment of an annuity was taxed at a rate of 50 per cent on all payments to the person conveying the property. The college or university was required to file an annual report specifying all annuity payments made during the year.[174]

State: academic provisions. A Liaison and Facilities Commission was created which included the presidents of two non-public colleges or universities appointed by the Governor with the advice and consent of the Senate. The Commission served as a state agency for the application, receipt, and dispersement of federal funds for the purpose of furthering public and private higher education. The Commission was also charged with conducting a continuous study and analysis of all phases of public and private higher education and developing plans and programs to meet the present and future needs of higher education in the state.[175]

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[172] Minn. Stat. Ann., § 550.37. [173] Ibid., § 272.02 and § 290.05.

[174] Ibid., § 293.01 and § 293.05.

[175] Ibid., §§ 136A.01 - 136A.02; §§ 136A.04 - 136A.06.

Scholarships, loans, and other student aids. Any student with one-fourth Indian blood was eligible for scholarship aid from the state to attend any accredited college or university; the aid was paid directly to the college the student attended.[176] Any person whose parent was killed during World War I was eligible to receive funds for matriculation fees, room, board, and books from the state to attend any college accredited by the North Central Association of Colleges and Secondary Schools, a law college approved by the state supreme court, or a theological seminary.[177] Any blind student regularly enrolled in a college or university approved by the Minnesota Braille and Sight Saving School was eligible to receive state aid for his college attendance.[178]

Miscellaneous provisions. The issuance of a license to sell intoxicating liquor within 1500 feet of any college campus was prohibited if the area had previously prohibited such sales.[179]

Mississippi

Corporate status. Globes and maps used by a teacher in a college, and books required by a student for the completion of his education were not liable to seizure under execution or attachment from the court.[180] Religious groups were authorized to hold and own the property upon which all the necessary buildings of the college were located, including faculty housing, plus any reasonable additional quantity of land.[181]

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[176] Ibid., § 124.48.

[177] Ibid., § 197.09.

[178] Ibid., § 248.04.

[179] Ibid., § 340.58.

[180] Miss. Code Ann., Tit. 3, Ch. 3, § 307 (Recomp. 1956).

Tax exemptions. Athletic contests between colleges or universities were not exempt from the amusement tax on admissions.[182] The real and personal property belonging to any college for educational purposes was exempt from any revenue and ad valorem tax on holdings up to 640 acres.[183]

State: academic provisions. The Commission on College Accreditation was formed and included one member elected as a representative of the private institutions. The purpose was to accredit resident colleges and universities in the state. Approval to grant degrees was granted by the Commission.[184]

Rights and responsibilities of students. A student was prohibited from possessing a deadly weapon on the campus or within two miles of the campus. Professors or instructors who knowingly allowed a student to retain such a weapon were considered guilty of a misdemeanor.[185]

Miscellaneous provisions. Colleges were permitted to purchase and possess pure, grain alcohol if used for medicinal, mechanical, or scientific purposes.[186]

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[181] Ibid., Tit. 21, Ch. 4, §5351. [182] Ibid., Tit. 34, §9083.

[183] Ibid., Tit. 39, Div. 1, §9697.

[184] Ibid., Tit. 24, Ch. 6, §6791.5.

[185] Ibid., Tit. 11, Ch. 1, §2085. [186] Ibid., Tit. 11, Ch. 3, § 2652.

Missouri

Corporate status. A college or university was not privileged to grant a degree unless the student had attended 80 per cent of the classes, had satisfactorily passed all the courses required by the college, and had been granted the degree by a vote of the trustees.[187] Religious and benevolent associations were authorized to establish a college.[188]

Tax exemptions. No tax or license fee was permitted to be assessed against any professor for the privilege of teaching in a college.[189] All real and personal property used and occupied by any college was exempt from taxation except lands held for investment, even though the income was used entirely for educational purposes. The income of educational corporations was exempt from taxation if none of the earnings inured to the benefit of any individual.

Miscellaneous provisions. The discharge of any firearm within two hundred yards of a college campus was prohibited.[190]

Montana

Corporate status. Colleges and seminaries were not authorized to confer any degrees or similar literary honors unless the courses of study were approved by the State Board of Education. Institutions accredited by an agency approved by the State Board were exempt from this requirement.[191]

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[187] Vernon's Ann. Mo. Stat., § 334.170. [188] Ibid., § 352.020.

[189] Ibid., § 71.620. [190] Ibid., § 137.100; § 143.120; § 562.080.

[191] Rev. Codes of Mont., § 75-108 (1947).

Tax exemptions. Property used exclusively for educational purposes was exempt from taxation; however, property in excess of such needs was not exempt.[192] Educational corporations in which no part of the income inures to the benefit of any private individual or stockholder was exempt from the corporation license tax.[193]

Miscellaneous provisions. Teachers in a college or university were released from the obligation of serving as a juror.[194]

Nebraska

Corporate status. The president and the professors of an institution of higher learning were authorized to enforce the rules and regulations of the trustees for the government and discipline of the students, including suspension or expulsion of any offenders.[195] Colleges and universities incorporated under previous statutes were eligible to come under the provisions of the Education Corporation Act. All institutions of higher learning were permitted to hold up to 320 acres of land for carrying on the agricultural purposes of the institution.[196] Any educational corporation whose property was held as stock was authorized to increase its capital stock or change it into scholarships upon a two-thirds majority vote of the stockholders.[197] Shareholders of an educational stock corporation were held individually liable for the debts of the corporation to an amount double that of the face value of the shares held. In non-profit educational corporations the trustees were held individually liable for contracting any debts beyond the actual means of the institution.[198] Any corporation, organized under the laws of another state for the purpose of establishing a college in Nebraska, was authorized to confer degrees if such institution complied with the provisions of the Nebraska Educational Corporation Act.[199] Whenever an institution of higher learning ceased to exist, the records of all grades attained by former students were required to be deposited with the registrar of the University of Nebraska. Transcripts of the records of former students of a defunct college or university were then issued by the registrar at the state university.[200]

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[192] *Ibid.*, §84-202.

[193] *Ibid.*, §84-1501.

[194] *Ibid.*, §93-1304.

[195] Reissue Rev. Stat. of Neb. (1943), §21-709.

[196] *Ibid.*, §21-711.

[197] *Ibid.*, §§21-712 - 21-713.

State: academic provisions. Graduates of any college or university which provided a course of study in teacher education comparable to the state teachers' colleges or the University of Nebraska were eligible to receive a state teaching certificate if such course of study was approved by the Commissioner of Education. The Commissioner was responsible for visiting each approved institution personally to ascertain that the state standards were being met. The trustees and the faculty were required to recommend any graduate of the institution for a teaching certificate before such was issued by the state.[201]

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[198] Ibid., §21-714.

[199] Ibid., §§21-721 - 723.

[200] Ibid., §§ 85-173 - 175.

[201] Ibid., §§79-1246 - 1247.

Miscellaneous provisions. Alcoholic liquor other than beer was prohibited from being sold within three hundred feet of any college campus.[202]

Nevada

Corporate status. A "private educational institution" was defined in Chapter 394 as an institution conducted for the purpose of offering instruction to twenty-five or more students during any one year. Accredited, denominational schools, including colleges, were exempted from inclusion in the above definition. Private educational institutions were required to hold a license from the State Board of Education.[203]

State: academic provisions. Instruction in the Constitutions of the United States and of Nevada was required during one year of the college program. A degree could not be granted unless the student had satisfactorily passed an examination on the Constitutions. Any professors assigned to teach such Constitutions were required to show, by examination or college credentials, satisfactory evidence of an adequate knowledge of the origins and principles of said Constitutions.[204]

Miscellaneous provisions. Amateur boxing, sparring, and wrestling matches or exhibitions sponsored by a college or university were exempt from the provisions of the Athletic Commission when the college students were the contestants.[205] Any person who willfully and maliciously damaged or destroyed any educational building or removed any useful or ornamental part thereon was guilty of a misdemeanor.[206]

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[202] Ibid., §53-177.

[203] Nev. Reissue Rev. Stat. (1943), Tit. 34, §§394.010 and 394.030.

[204] Ibid., §394.150 and §394.160.

New Hampshire

Corporate status. A Coordinating Board of Advanced Education and Accreditation was established for the purpose of accrediting institutions desiring to confer degrees. The legislature received the recommendation of the Board and granted the power to confer degrees on each institution by special act. The Board was composed of nine members of which one member was to be selected from a private college or university. Applications from out-of-state colleges desiring to establish a branch institution in New Hampshire were evaluated by the Coordinating Board. The State Board of Education was responsible for listing any branch institution not approved by the Coordinating Board as a non-approved institution, and publish such information in the newspapers as well as report the same to the colleges and secondary schools in the region.[207] No institution was allowed to use the term "college" or "university" in its name unless incorporated under this chapter; the restriction was applicable to all such institutions not incorporated after January 1, 1965.[208] No college or university was to confer any degree without prior authorization by act of the legislature except an institution which had been in continuous operation since 1775. The Board was granted authority to initiate appropriate court action to restrain any institution from granting degrees unlawfully.[209] Any denominational college or university was permitted to limit admission to or give preference to persons of the same religion or denomination, under whose control the institution operated, without violating the Discriminatory Practices Act of the state.[210]

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[205] Ibid., Tit. 41, § 467.170. [206] Ibid., Tit. 16, § 206.130.

[207] N. H. Rev. Stat. Ann., Tit. 15, §§ 186: 13-a - 13-c (1955).

[208] Ibid., Tit. 22, § 292: 8-g.

Tax exemptions. The real and personal property of a strictly educational corporation or organization was exempt from taxation. When the value of dormitories, dining rooms, and kitchens exceeded a value of $150,000, the excess above this amount was taxable. The limit on such valuation was permitted to be raised for purposes of aiding the tax exemption of an institution by the governing board of a city or at an annual meeting of a town.[211] Any income used strictly for educational purposes, if no earnings inured to the benefit of any private individual, was exempt from any direct or indirect taxes.[212]

State: academic provisions. The Council for Teacher Education was established with the provision that one member be selected from a private educational institution. One of the duties of the Council included issuing advisory reports to public and private institutions concerned with teacher education and its financing in the state.[213]

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[209] *Ibid.*, Tit. 22, § 292:8-h and § 292:8-j.

[210] *Ibid.*, Tit. 31, § 354-A:8.

[211] *Ibid.*, Tit. 5, § 72:23.

[212] *Ibid.*, Tit. 5, § 77:8.

[213] *Ibid.*, Tit. 15, §§ 190:1 - 190:3.

Rights and responsibilities of students. Any minor who contracted to borrow money for the purpose of attending a college or university was deemed of full legal capacity to act in his own behalf. Said minor had full rights and privileges and was subject to the liabilities of any person of legal age.[214]

New Jersey

Corporate status. Private colleges and universities were restricted from adopting an institutional name which included reference to "state" or "New Jersey."[215] The right to grant degrees by institutions under this chapter did not extend to authorization for the practice of medicine, dentistry, or law. Seminaries or schools of theology were granted power to confer the degrees of bachelor of divinity or theology, the bachelor, master, or doctor of sacred theology, and the bachelor of arts when appropriate. The power to grant honorary degrees was also extended to seminaries and schools of theology.[216] Colleges and universities were prohibited from providing any instruction leading to a degree unless such institution held a license from the State Board of Education. Special provision was made for licensing private medical schools. The license to grant degrees was subject to revocation by the State Board.[217] A new statute prohibited the dispersement of state appropriated monies for the purposes of public higher education to "any institution wholly or in part under the control of a religious denomination or in which a denominational tenet or doctrine is taught."[218]

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[214] Ibid., Tit. 15, § 193.26.

[215] N. J. Stat. Ann., Tit. 18, § 18:20-1.

[216] Ibid., Tit. 18, §§ 18:20-2 - 18:20-3.

[217] Ibid., Tit. 18, § 18:20-5 and § 18:20-7; §§ 18:20-18 - 18:20-24.

Tax exemptions. The buildings and the land upon which the buildings of an incorporated college or seminary were located, not to exceed five acres, were exempt from the property tax if such facilities were used exclusively for educational purposes.[219]

Scholarships, loans, and other student aids. Any blind student desiring to attend any college or university authorized to grant degrees was eligible to receive financial aid from the state if the student was unable to pay his own expenses. The institution in which the blind student was enrolled was required to provide the Commissioner of Education with a progress report once each quarter. The payments of such aid were made directly to the institution.[220]

New Mexico

Corporate status. All colleges and universities incorporated under the laws of the state were authorized to confer degrees and all other literary honors conferred by similar institutions of like grade.[221]

Tax exemptions. Income from tuition payments received by any parochial or private, non-profit college or university was exempt from the taxes imposed by the amended Emergency School Tax Act.[222]

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[218] Ibid., Tit. 18, § 18:22-14.1. [219] Ibid., Tit. 54, § 54:4-3.6.

[220] Ibid., Tit. 18, §§ 18:18-1 - 18:18-4.

[221] N. M. Stat. Ann., § 51-14-36 (1953). [222] Ibid., § 72-16-15.

New York

Corporate status. A college or university which maintained a pedagogical department was eligible to receive funds from the county within which such institution was located. The purpose of such funds was to pay or help pay the salaries of the faculty teaching in the pedagogical department. The appropriation received from assessment on taxable property in the county was warranted as a means of securing an adequate number of teachers for employment in the public schools of the county.[223] Every incorporated college or university was authorized to construct and maintain a system of water works for the campus and enlarge the same if deemed necessary. The institution was further authorized to furnish water to towns where no municipal or private public service corporation operated if the town was in the same sewer district. Such college was privileged to take land by condemnation for extension of the water system if agreement could not be reached with the land owner. Any college completing a system of water works was also authorized to construct a sewer system. Cornell University served the hamlet of Forest Home.[224] The limits against discrimination extended only to race, color, and national origin with regard to entrance to religious or denominational educational institutions. The abridgment of the right of any religious faith to maintain colleges exclusively or primarily for its own faith was prohibited.[225] "Statutory or contract colleges" were defined as colleges operated by private institutions on behalf of the state according to statute or contractual agreement. For all practical purposes, such institutions operated under the State University system in a like manner with public colleges and universities in the state.[226] Existing private institutions were granted the right to be heard whenever the State University trustees formulated plans and recommendations for additional collegiate facilities in the state.[227] The New York Higher Education Assistance Corporation was established to provide loans to students to attend any institution of higher learning approved by the state.[228] Trustees of incorporated colleges were empowered to hold real and personal property in trust in accordance with the stated purposes of the donor.[229] Educational institutions registered and approved by the State Department of Education were not required to register with the Department of Social Welfare for the purpose of soliciting funds.[230] Any enactment of the Regents of the University of New York which would impair the freedom of the governing board of any theological seminary to determine and regulate the theological instruction to be given therein was prohibited.[231] A minimum of $500,000 in financial resources was required before an institution of higher learning was granted the power to confer degrees. Colleges and universities were prohibited from maintaining a faculty, or a department of education, or from conferring degrees in any location except that specifically authorized in its charter.[232]

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[223] N. Y. County Law, § 829 (McKinney).

[224] N. Y. Education Law, § 227. [225] *Ibid*., § 313.

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[226] _Ibid_., § 350.

[227] _Ibid_., § 351.

[228] _Ibid_., §§ 650 - 658.

[229] N. Y. Pers. Prop. Law, § 13; N. Y. Real Prop. Law, § 114.

[230] N. Y. Soc. Welfare Law, § 482-a.

[231] N. Y. Educ. Law, § 207.

State: academic provisions. All institutions under the educational supervision of the state were subject to visitation and inspection by the Board of Regents or the Commissioner of Education. The failure or refusal of an institution to complete informational reports as requested by the Regents or the Commissioner was considered grounds for suspension of the institution's charter.[233]

Rights and responsibilities of students. Hazing was prohibited by students attending any college in the state. Any tattooing or permanent disfigurement of any person as a result of hazing was considered a crime punishable by imprisonment.[234]

Miscellaneous provisions. A special permit was granted to colleges and universities to purchase alcohol for purposes stated in the permit. Such permit was renewable annually.[235] Any act to fix prices on commodities was not applicable to commodities sold or offered for sale to any college or university.[236] The provisions of the labor law which provided full freedom of association, liberty of contract, and equal bargaining power with that of the employer were not applicable to employees of exclusively non-profit educational corporations. However, persons employed by educational corporations in a building operated by a commercial or industrial enterprise for profit were subject to the provisions of the labor law.[237] An incorporated college or university was restrained from keeping any table, cards, dice, or other articles or equipment generally used in games of chance.[238] The Chancellor of Syracuse University, a private institution, served on the Board of Trustees of the New York State College of Forestry, a state-operated college, located at the Syracuse University campus.[239]

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[232] Ibid., § 218.

[233] Ibid., § 215.

[234] N. Y. Penal Code, § 1030.

[235] N. Y. Alcohol Bev. Law, § 92.

[236] N. Y. Gen. Bus. Law, § 369-a.

Alfred University and Cornell University, non-public institutions, were unique in the fact that state public colleges existed on these campuses under partial control of the non-public institutions.[240] The New York State College of Ceramics was located at Alfred University under the administration of university officials relative to faculty, discipline, and regulation of tuition fees.[241] Cornell University was treated under twelve specific acts which granted the university corporate powers and responsibilities, provided for the administrative regulation of the state colleges attached to the university, and provided for the distribution of state scholarships to the university.[242]

North Carolina

Corporate status. Lawful educational trusts created by persons outside the state were held valid in North Carolina. Gifts, grants, bequests, or devises were not to be held invalid for indefiniteness of purpose.[243]

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[237] N. Y. Labor Law, § 700 and § 715. [238] N. Y. Rem. Law, § 971.

[239] N. Y. Educ. Law, § 6001 and § 6003. [240] Ibid., § 355-a.

[241] Ibid., §§ 6101 - 6103. [242] Ibid., § 4210; §§ 5701 - 5715.

Tax exemptions. Property bequeathed to any educational corporation was exempt from the inheritance tax. The buildings and all the land occupied by a college, university, or seminary, and deemed reasonably necessary to carry out its purposes, was exempt from taxation.

Rights and responsibilities of students. Male college students were prohibited from aiding or engaging in hazing. The institution must expel any student convicted of hazing; failure to expel was considered a misdemeanor on the part of the faculty or trustees. A copy of the article on hazing was required to be displayed at every college where applicable.[244]

Miscellaneous provisions. The written permission of the dean of a denominational college was required before the name of the college or any group therein could be used for purposes of public advertising in connection with a dance or dance hall.[245] The issuance of a license to sell alcoholic beverages on college campuses was prohibited.[246] Habitual users of narcotics or persons under the influence of narcotics or alcohol were prohibited from operating a vehicle on the premises of any college. Reckless driving on the roadways of a private college or university was punishable by fine or imprisonment.[247]

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[243] Gen. Stat. of N. C., § 36-22 and § 36-23.1.

[244] Ibid., §§ 14-35 - 14-38.

[245] Ibid., § 14-397.

[246] Ibid., § 18-87.

[247] Ibid., § 20-139 and § 20-140.1.

All publications issued by any person or department in the state government were to be furnished to Duke University and Davidson College upon request.[248]

North Dakota

Tax exemptions. The lands, buildings, and equipment necessary to carry out the educational purposes of the institution were exempt from taxation if not used for profit.[249]

Scholarships, loans, and other student aids. Scholarships were available to residents of the state who were unable to attend the college of their choice without financial assistance. The State Board for Indian Scholarships provided fourteen scholarships to persons with at least one-fourth Indian blood for attendance at any institution of higher learning in the state.[250]

Ohio

Corporate status. The president and the faculty of an incorporated college or university were authorized to enforce the rules and regulations enacted by the trustees for the government and discipline of the students, including suspension and expulsion of offenders.[251]

Rights and responsibilities of students. Hazing or the committing of an act that degraded, disgraced, frightened, or injured a fellow student was punishable by fine and imprisonment. Any faculty member who knowingly allowed hazing or any attempt to haze was subject to fine. Tattooing or permanently disfiguring the body by use of nitrate of silver or similar substance in such hazing was considered mayhem and subjected the violator to imprisonment from three to thirty years.[252]

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[248] Ibid., § 147-50.

[249] N. D. Cent. Code Ann., § 57-02-08.

[250] Ibid., § 15-62-02 and § 15-63-03.

[251] Page's Ohio Rev. Code Ann., Tit. 17, § 1713.08.

Oklahoma

Corporate status. A degree-granting institution of higher learning was permitted to solicit contributions without registering with the Commissioner of Charities and Corrections if such solicitations were limited to the student body and parents, alumni, faculty, and trustees.[253] All property of educational corporations was restricted solely to the purposes of education. Income and other monies from such property was prohibited from inuring to the benefit of the corporators or any contributor to the endowment of the college.[254] Bequests, devises, and donations made for particular purposes were restricted solely to those purposes.[255] The power to confer academic and professional degrees was granted to the University of Tulsa, Oklahoma City University, Phillips University, and Oklahoma Baptist University and six other institutions of higher learning by special legislative act. The State Board of Education was authorized to grant colleges and universities the right to confer degrees, and no institution was authorized to grant such degrees without approval of the State Board.[256] Private and denominational institutions of higher learning were permitted to become coordinated with the Oklahoma State System of Higher Education, but state funds were prohibited from aiding such institutions regardless of the other privileges gained by such membership.[257]

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[252] Ibid., Tit. 29, §§ 2901.20 - 2901.22.

[253] Okla. Stat. Ann., Tit. 18, § 552.4.

[254] Ibid., Tit. 18, § 571.

[255] Ibid., Tit. 63, § 171.

Private colleges and universities were required to be established as corporations. Real and personal property could be held solely for educational purposes, and no part of the earnings could inure to the benefit of any person or contributor to an endowment. Private institutions were required to be accredited under the regulations and standards of the Oklahoma State Regents of Higher Education unless accredited by a regional accrediting agency. Private institutions of higher learning could grant only those degrees authorized by the Oklahoma State Regents or a regional accrediting agency.[258]

Tax exemptions. The real and personal property necessary to the ordinary conduct of the institution was exempt from taxation. Lands owned or used for any auxiliary business of the educational corporation was subject to assessment of taxes whether the profits were used for educational purposes or not.[259]

State: academic provisions. Six semester hours of credit in college American history and government were required of every student in any institution of higher learning prior to the conferring of a degree.

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[256] Ibid., Tit. 70, §§ 1921 - 1923. [257] Ibid., Tit. 70, § 1983.

[258] Ibid., Art. XI, §§ 4101 - 4105. [259] Ibid., Tit. 70, § 1917.1.

Miscellaneous provisions. Colleges and universities could possess pure, grain alcohol for scientific and mechanical purposes in accordance with state regulations. If the alcohol was purchased from a federal bonded warehouse in accordance with the laws of the United States, the institution was permitted to transport such alcohol into the state without a permit and without an institutional bond.[260]

Oregon

Corporate status. A non-profit college or university which was accredited by the Northwest Association of Secondary and Higher Schools and had been in operation for twenty years was authorized to receive transfers of money or property conditioned upon the institution's agreement to pay a life annuity or life income to the transferor. Such action was subject to the approval of the State Insurance Commissioner.[261] A college or university was not eligible to grant a degree until the institutional requirements leading to such degree had been approved by the State Board of Education. The institutions were required to file such information as directed by the State Board of Education. The privilege of inspection of any college or university was held by the State Board. Failure to maintain standards established by the State Board was considered grounds for revocation of the institution's power to confer degrees.[262]

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[260] Ibid., Tit. 37, § 38; § 50.2; § 131.

[261] Oregon Rev. Stat. 1953, Tit. 12, §§ 128.810 - 128.890 (1963 Replacement Parts).

[262] Ibid., Tit. 30, § 710 and § 750.

Tax exemptions. Bequests, devises, gifts, and legacies were exempt from taxation if made to an educational institution exclusively engaged in the purposes for which it was chartered. Any corporation organized and operated exclusively for educational purposes was exempt from the corporate excise tax.[263]

State: academic provisions. The signing of an oath of allegiance was required before any person was permitted to teach in a private or parochial college or university. Officials of such institutions were prohibited from employing any person failing to sign the oath.[264]

Scholarships, loans, and other student aids. A blind student attending any approved college or university could receive state aid if he met the residence requirements of the state. The State Scholarship Commission awarded scholarships to qualified residents to attend any four-year, non-profit, accredited institution of higher learning in the state.[265]

Pennsylvania

Corporate status. Colleges, universities, and theological seminaries were granted power to confer baccalaureate degrees in art, science, philosophy, or literature upon students who completed courses covering a period of four years. Any educational corporation formed under the Non-Profit Corporation Act with the power to confer degrees was subject to visitation and inspection by representatives of the Superintendent of Public Instruction. Failure of the institution to maintain the state standards was considered grounds for the revocation of an institution's power to confer degrees.[266] Colleges and universities were prohibited from knowingly conferring a degree upon any person in consideration of a payment of money or property.[267] School districts were restrained from condemning any land actually owned and used by an incorporated institution of higher learning.[268] Educational institutions could not use the terms "college" or "university" as part of the name of the institution unless approved by the State Board of Education. Under specified conditions, the court could grant an injunction against the use of such terms in the name of an unapproved institution.[269] The Pennsylvania Fair Educational Opportunities Act held that there was a fundamental American right for members of various religions to establish and maintain educational institutions exclusively and primarily for students of their own religious faith. However, such institutions were not to use race, color, ancestry, or national origin as a limitation to admission to such denominational institutions. Colleges and universities were required to retain all records pertaining to the admission, rejection, suspension, or expulsion of students for a period of three years.[270] Appropriation of public funds to any state aided institutions of higher learning was subject to the filing of an annual written report by the institution. The report was to set forth what procedures the institution had adopted to determine whether it had reason to believe that any subversive persons were in its employ. The steps taken, if any, to remove a person held to be subversive were also to be included in such report. The appropriation of public funds was dependent upon the Governor's approval of the written report.[271] Appropriations of funds to educational institutions not under the exclusive control of the state for the purpose of erecting buildings or other permanent improvements were subject to lien by the state on such structure. Such lien was non-interest bearing and was held by the state for a period of twenty years.[272]

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[263] *Ibid.*, Tit. 12, § 118.020 and Tit. 29, § 317.080.

[264] *Ibid.*, Tit. 30, § 342.620 and § 342.625.

[265] *Ibid.*, Tit. 30, § 346.060 and § 351.620.

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[266] Pa. Stat., Tit. 15, § 2851-312. [267] _Ibid._, Tit. 18, § 4674.

[268] _Ibid._, Tit. 24, § 7-721. [269] _Ibid._, Tit. 24, §§ 2422 - 2424.

[270] _Ibid._, Tit. 24, § 50002 and § 50004.

Tax exemptions. All properties deemed necessary for the occupancy and operation of an institution of higher learning were exempt from taxation if all income was used exclusively for the educational purposes of the institution.[273]

Scholarships, loans, and other student aids. The state awarded competitive scholarships to enable selected students to attend any institution in the state approved by the Department of Public Instruction.[274] The Pennsylvania Higher Education Assistance Agency was formed to provide loans to residents of the state who were attending approved institutions of higher learning either in or outside the state.[275]

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[271] Ibid., Tit. 65, § 223. [272] Ibid., Tit. 72, § 3484 and § 3489.

[273] Ibid., Tit. 72, § 5453-202. [274] Ibid., Tit. 24, § 16-1612.

[275] Ibid., Tit. 24, § 5102.

Rights and responsibilities of students. Any students applying for, receiving, and repaying a loan from the state agency were not disqualified for being under the age of twenty-one. A student was deemed to have full legal capacity to act, and was granted all the rights, powers, privileges, and obligations of a person of full age.[276]

Miscellaneous provisions. Boxing, sparring, or wrestling matches and exhibitions conducted under the supervision and sponsorship of a college or university were exempted from the state regulations, provided the participants were students enrolled at the institution.[277] Provision was made for the imposition of a fine and court costs upon any person who failed to return books or other loaned materials to the college library within thirty days of a written notice requesting such books or materials returned.[278] The auditoriums and gymnasiums of colleges used for purposes of any public assembly could not be placed above the first floor nor below the ground level.[279]

Rhode Island

Corporate status. The Rhode Island School of Design, a private institution offering professional and teacher preparation programs through the master's level, was annually appropriated such sums of money as was deemed necessary. The appropriation was limited to the textile department exclusively for the general uses and purposes of such department. The State Department of Education was empowered to visit and examine the institution and to order the payment of said appropriations to the Rhode Island School of Design.[280] Private institutions of higher learning held no authority to confer any degrees unless the charter or the articles of incorporation specifically granted such power and the nature of the degrees to be granted. Amendments to the charter or articles of incorporation which added educational functions or the granting of degrees to the powers of the institution required the approval of the State Board of Education prior to the issuance of such certificate. The power to confer degrees was subject to revocation by the State Board. An institution was provided with a twenty-day prior notice of a hearing set for the purpose of determining the adequacy of the faculty, educational facilities, and equipment of such institution. Any institution granting degrees without approval was liable to court action for the revocation of the charter of the institution. Colleges and universities established by special act of the General Assembly were excluded from the provisions of this section, as well as institutions founded prior to 1922. Registration with the State Department of Education was required of all private colleges and universities.[281]

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[276] Ibid., Tit. 24, § 5105.

[277] Ibid., Tit. 4, § 23 and § 30.103.

[278] Ibid., Tit. 18, § 4911.

[279] Ibid., Tit. 24, § 12225.

Tax exemptions. The buildings and estate owned by any corporation and used for a seminary of learning was exempt from the property tax, if the amount of property did not exceed one acre and if none of the profits inured to the benefit of any owners or stockholders. The estates, persons, and families of the president and professors at Brown University were exempt for an amount not to exceed $10,000 for each such officer.[282] Non-profit institutions of higher learning were exempt from the sales and use taxes on tangible personal property.[283]

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[280] Gen. Laws of R. I., § 16-35-1 and § 16-35-4 (1956).

[281] Ibid., §§ 16-40-2 - 16-40-6; §§ 16-40-9 - 16-40-11.

State: academic provisions. Brown University, Providence College, Salve-Regina College, and two public institutions were selected by the State Board of Education to cooperate in the establishment of post-graduate courses of instruction at said colleges and universities. The purpose of the program was to provide such instruction in the principles and practices of education designed to prepare students for positions as superintendents of public schools and high school principals and teachers. The General Assembly was obligated to appropriate such sums as deemed necessary to carry out the post-graduate program, including scholarships.[284]

Scholarships, loans, and other student aids. State scholarships were granted to persons who desired to become teachers, principals, or superintendents in the public schools by pursuing post-graduate education at Brown University, Providence College, Salve-Regina College, or two public institutions. Scholarships were granted to selected high school graduates to attend Bryant College, a non-public institution, for purposes of being trained for teaching in the field of commercial education. Scholarships for students who desired to become teachers of handicapped children were provided for attendance at any educational institution approved by the State Board of Education. The Department of Education was authorized to provide readers for blind students attending institutions of higher learning in a manner deemed appropriate. The State Board was authorized to appoint selected students for state scholarships for attendance at Brown University, Providence College, and Salve-Regina College. A recommendation, signed by the president of the appropriate institution, was required for each scholarship recipient. The State Board was authorized to provide financial aid for attendance at the Rhode Island School of Design if such student was financially unable to defray such expenses. Rhode Island science and mathematics scholarships were provided by the state for attendance at any qualified institution of higher learning.[285]

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[282] Ibid., § 44-3-3.

[283] Ibid., § 44-18-30.

[284] Ibid., § 16-14-2 and § 16-14-4.

Miscellaneous provisions. The president, professors, tutors, and students of recognized colleges and universities were exempt from serving as jurors.[286] Colleges and seminaries were required to provide fireproof stairways or fire escapes in the buildings according to the state standards.[287] The celebrations of the annual commencements of Brown University and Providence College were to be attended by the county sheriff and as many deputies as deemed necessary to preserve good order.[288]

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[285] Ibid., § 16-37-26.

[286] Ibid., § 9-9-3.

[287] Ibid., § 23-30-1.

[288] Ibid., § 42-49-21.

South Carolina

Corporate status. The Major Conservatory of Music was granted the power to confer the degree of Bachelor of Music or the degree of Bachelor of Music and Public School Music based on the completion of a four-year course approved by the State Board of Education. A diploma from the institution entitled the holder to be accredited by the State Board in the same manner as diplomas were accredited from other colleges.[289] A State Advisory Commission on Higher Education was to promote a clear understanding and greater unity among all private and public institutions of higher learning in the state.[290]

Tax exemptions. The income of any incorporation or trust organized for educational purposes was exempt if no part of the earnings inured to the benefit of any private individual or stockholder.[291]

State: academic provisions. All colleges and universities offering a teacher preparation program were required to offer courses in physical education training and instruction. Students in the teacher education program were required to take such courses.[292] Every institution of higher learning in the state was responsible for reporting the first semester accomplishments of each freshman student to the high school from which the student graduated.[293]

Miscellaneous provisions. Any person who unlawfully took or willfully or maliciously marked, damaged, or disfigured any books, engravings, statues, or other works of literature or art belonging to any incorporate college or university was guilty of a misdemeanor.[294] No person was permitted to loiter about the premises or unnecessarily interfere with or disturb the students or teachers of any college attended by women or girls.[295]

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[289] Code of Laws of S. C., § 22-13 (1962).

[290] Ibid., § 22-15.1.

[291] Ibid., § 65-226.

[292] Ibid., § 21-417.

[293] Ibid., § 22-10.

South Dakota

Corporate status. Colleges and universities were permitted to add mechanical shops or agricultural lands not exceeding 320 acres to be used as part of a course of study.[296] All bequests, devises, and donations for particular purposes were to be applied strictly to those purposes.[297] Incorporated colleges and universities held the power to confer all degrees and honors usually conferred by similar institutions of higher learning in the United States. Consideration was given to the standards held for the course of study and the level of accomplishment of the student in such courses.[298] Any non-public college not supported by a religious or fraternal organization was prohibited from collecting any fees in excess of $25 prior to actual attendance at the institution.[299]

Tax exemptions. All real and personal property used exclusively by and for the support of an institution of higher learning was exempt from taxation; however, farmlands or improved town or city property owned but not occupied by the institution in carrying out its primary purpose was subject to such taxation.[300]

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[294] Ibid., § 16-372.

[295] Ibid., § 16-551.

[296] S. D. Code of 1939, § 11.1704.

[297] Ibid., § 11.1705.

[298] Ibid., § 11.1706.

[299] Ibid., § 13.1114 (Supp. 1960).

State: academic provisions. The teaching of any subject except foreign or ancient languages in other than the English language was prohibited. Any college instructor or officer who violated this act was guilty of a misdemeanor.[301]

Tennessee

Corporate status. The legal use of corporate seals in or upon written contracts or other instruments of writing was abolished. The presence of such seal on documents could not affect the character, validity, or legality of such document.[302]

Tax exemptions. The real and personal property owned by an educational institution and occupied by the institution or its officers exclusively for the educational objects for which it was chartered was exempt from taxation. The lands leased or used for other than the specific objects of the institution were taxable, whether the income from such lands was used for the educational purposes of the institution or not. The sales or use tax on tangible personal property was exempted when purchased by non-profit institutions of higher learning, including church-supported colleges and universities.[303]

Scholarships, loans, and other student aids. State funds were provided to blind persons for the purpose of securing reader services during attendance in post-graduate education in any accredited college or university.[304] The Tennessee Educational Loan Corporation was formed by this act and for the purpose of guaranteeing the loans of worthy and needy students for attendance at accredited colleges and universities.[305]

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[300] *Ibid.*, § 57.0311.

[301] *Ibid.*, § 15.9913 (Supp. 1960).

[302] Tenn. Code Ann., § 47-15-101.

[303] *Ibid.*, § 67-502 and § 67-3014.

Miscellaneous provisions. Any person who willfully and unnecessarily interfered with or disturbed the students of any female college or entered the premises thereof without permission from the officials of the institution was guilty of a misdemeanor. Any person loitering on the streets or alleys adjoining a female college with intent to annoy or disturb either students or faculty was subject to fine.[306] Educational institutions were authorized to receive and possess alcohol for scientific and therapeutic purposes.[307]

Texas

Corporate status. The president and the professors constituted the faculty of a college or university and had the power to enforce the rules and regulations of the trustees for the government and discipline of students. The faculty was empowered to suspend or expel offenders of such rules and regulations as deemed necessary.[308]

Tax exemptions. Endowment funds of institutions of learning and religion not used for the purpose of profit, and endowment funds invested in bonds or mortgages for buildings used exclusively for educational purposes were exempt from taxation. Real property held under the authority of a college or university and leased to other persons was not exempt.[309]

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[304] Ibid., § 49-3027. [305] Ibid., § 49-4101 and § 49-4103.

[306] Ibid., § 39-1209 and § 39-1210. [307] Ibid., § 39-2510.

[308] Vernon's Tex. Ann. Stat., Tit. 28, Art. 1302-3.02.

Scholarships, loans, and other student aids. A loan program was established for students attending institutions of higher learning. A private, non-profit college or university was eligible to become a participating institution in the program if accredited or approved by the Texas Education Agency or Co-ordinating Board.[310]

Miscellaneous provisions. Colleges and seminaries having dormitories were required to provide additional fire escapes whenever the total amount of floor space of such dormitory exceeded the established minimum.[311] Boxing or sparring contests or exhibitions between students which were conducted by colleges or universities as part of the athletic program were exempt from the regulations in regard to such activities.[312] Athletic contests and trial contests for the purpose of testing the strength or capacity of materials and machinery of any kind conducted by colleges or universities were exempt from the provisions of the act prohibiting personal, physical, or mental endurance contests that continue longer than twenty-four hours in public competition for awards.[313]

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[309] Ibid., Tit. 122, Art. 7150.

[310] Ibid., Tit. 49, Art. 2654g.

[311] Ibid., Tit. 63, Art. 3956.

[312] Ibid., Tit. 11, Art. 614-1.

[313] Ibid., Tit. 11, Art. 614b.

Utah

State: academic provisions. All colleges and universities were required to provide instruction in the Constitution of the United States; the extent of such instruction was left to the discretion of the faculty of each institution.[314] Institutions of higher learning were permitted to conduct classes on legal holidays, other than Sundays, if a portion of the day was devoted to exercises appropriate to such holiday.[315]

Vermont

Corporate status. Educational corporations, whether incorporated or in the process of incorporating, were not granted the power to confer degrees unless approved by the State Board of Education in a certificate attached to the articles of incorporation of such institution. The certificate affirmed that the institution was qualified to provide the necessary instruction and was financially capable of maintaining the educational standards necessary to warrant the conferring of degrees.[316] When a court rendered a judgment against the trustees of a college, the execution of such judgment was held against the goods, chattels, or lands of such trustees.[317] The president and fellows of Middlebury College and the trustees of St. Michael's College were responsible for the submission of an annual report to the Governor which contained a summary of the accomplishments of all departments of the institution including a detailed financial accounting of such activities of the institution.[318]

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[314] Utah Code Ann., § 53-1-2.

[315] *Ibid.*, § 53-1-3.

[316] Vt. Stat. Ann., Tit. 11, § 102; Tit. 16, § 148.

[317] *Ibid.*, Tit. 12, § 2691.

Tax exemptions. Any real property acquired by a college of university was assessed at a fixed value at the first quadrennial appraisal following such acquisition and taxed on such valuation. The valuation of the property did not change as long as the property was owned and used by the institution for its educational purposes, regardless of the improvements established on the property. The voters of any town or city in which an institution of higher learning was located were authorized to exempt the property from taxation. Lands owned by the college and leased were not exempt from taxation.[319]

State: academic provisions. Any professor or instructor was required to sign an oath of affirmation to support the Constitutions of the United States and Vermont prior to engaging in teaching at any institution of higher learning in the state. Such persons were forbidden from giving or permitting instruction or activity contrary to or subversive of the Constitution and the laws of the United States or the Constitution of Vermont.[320]

Scholarships, loans, and other student aids. Each Senator in the state provided scholarships in amounts between $100 and $300 to students who were "qualified, needy, and worthy". The scholarships allowed the student to attend any senior college or university in the state which was accredited by the New England Association of Colleges and Secondary Schools. The admissions officer of each eligible institution was required to give publicity to the availability of such scholarships as well as to provide each Senator with a list of all applicants in rank order form from his county. Each institution annually provided the Secretary of State with a list of the names of all enrolled students receiving scholarships.[321]

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[318] Ibid., Tit. 16, § 2536.

[319] Ibid., Tit. 32, § 3831.

[320] Ibid., Tit. 16, § 4.

Virginia

Corporate status. The trustees of institutions of higher learning were authorized to adopt emergency by-laws which could become operative "during any emergency resulting from an attack on the United States or a nuclear or atomic disaster." Any measures deemed necessary and practical were included in such by-laws.[322] Official approval of a board action was permissible without a meeting if the action was in written form and signed by all trustees.[323] Colleges and universities were prohibited from conferring any degree without the prior approval of the purpose of such degree by the State Board of Education. Institutions accredited by the State Board or authorized by special act of the General Assembly were exempt from the above requirement.[324] Lands of non-public colleges and universities were subject to condemnation for the purpose of building public highways, with the exception of lands within five hundred feet of any buildings used for educational purposes. The lands around the buildings used for a campus, park, or athletic field were also excepted.[325] Private colleges and universities were required to hold a permit to serve food in their restaurants, and the commissioner and his assistants were authorized to inspect such premises.[326] All bequests, devises, gifts, and grants made for the education of white persons or colored persons were valid. Devises or bequests to any unincorporated theological seminary were not valid by this act. The General Assembly reserved the right to suspend or repeal the authority given any institution for maintaining any bequest or devise previously granted.[327] Any corporation soliciting contributions for any cause or thing was required to maintain adequate records of all receipts and disbursements, and was open to inspection by the State Corporation Commission. The record books were retained at the institution for a period of two years following such solicitation.[328]

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[321] Ibid., Tit. 16, § 2531a; § 2531d; § 2531f.

[322] Code of Va. Ann., § 13.1-212.1 (1950).

[323] Ibid., § 13.1-216.

[324] Ibid., § 23-9.

Tax exemptions. Real estate belonging to religious associations or denominations, or their trustees, for educational purposes was exempt from state and local property taxation. Educational corporations were excluded from the payment of an annual tax on the net income of corporations.[329]

Rights and responsibilities of students. A minor sixteen years of age or older who procured a loan for the expressed written purpose of attending an institution of higher learning approved by any of the six regional accrediting agencies was held liable for the repayment of such loan as though he were an adult. No plea of infancy was authorized.[330]

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[325] Ibid., § 25-46.6.

[326] Ibid., § 35-25 and § 35-26; § 35-29 and § 35-30.

[327] Ibid., § 55-26 and § 55-34.

[328] Ibid., § 57-40.

[329] Ibid., § 58-12 and § 58-128.

Miscellaneous provisions. All incorporated colleges and universities in the state were provided with a copy of all maps published by the state.[331] Amateur wrestling, boxing, or sparring exhibitions held under the auspices of any college were not subject to the control of the Virginia Athletic Commission.[332] Any person who willfully, maliciously, or wantonly damaged any library materials by writing upon, defacing, mutilating, or tearing was subject to fine or imprisonment.[333]

Washington

Corporate status. State banks or trust companies were empowered to contribute sums from their surplus or reserve funds to any educational corporations, if no earnings inured to the benefit of any individual and no substantial part of their activities involved carrying on propaganda or otherwise attempting to influence legislation.[334]

State: academic provisions. The president of every educational institution in the state was required to file an annual written report with the Superintendent of Public Instruction containing such factual data as deemed necessary by the State Superintendent.[335] The State

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[330] Ibid., § 8-135.1.

[331] Ibid., § 2-238.

[332] Ibid., § 9-45.

[333] Ibid., § 42-20.

[334] Rev. Code of Wash. Ann., § 30.04.350.

[335] Ibid., § 28.03.030.

Board of Education was authorized to investigate the character of the work required in the teacher preparation program of any institution of higher learning. An accredited list of colleges and universities whose graduates were eligible to receive certificates to teach without taking an examination from the state was published by the State Board. Approval of all courses for teacher preparation in education departments of all state accredited institutions was the responsibility of the State Board of Education.[336] A one quarter or semester course in Washington state history and government or in Pacific Northwest history and government was required in all institutions offering courses in teacher education.[337]

Scholarships, loans, and other student aids. Blind students were provided financial aid by the state while attending an institution of higher learning therein, but the college or university was obligated to waive the tuition and laboratory fees for the student as a prerequisite for the grant of such aid by the state.[338]

Miscellaneous provisions. Any person who loitered about the buildings of any private institution of higher learning or the adjacent public premises without a lawful purpose was subject to a charge of vagrancy and punished by fine or imprisonment.[339]

West Virginia

Corporate status. The State Board of Education was responsible for the supervisory control over all teacher training departments of private or denominational colleges and universities. Institutions of higher learning were not authorized to confer degrees unless the courses of study met the minimum standards established by the State Board.[340] The State Commission on Higher Education for Public and Non-Public Institutions of Higher Education was established for purposes of: (a) receiving and disbursing funds appropriated by the Federal government as required by the Higher Education Facilities Act of 1963 and all subsequent acts of Congress, and (b) conducting long-range studies of higher education in the state. The Commission consisted of nine members appointed by the Governor; two members were required to be members of the Board of Trustees of two different non-public colleges or universities. The Governor's appointments were subject to the advice and consent of the state Senate.[341] No church or religious denomination was permitted to become incorporated under the Non-Stock Corporation Act.[342] The trustees of any college, university, or seminary to which real or personal property was bequeathed, conveyed, or transferred were authorized to appoint the number of trustees deemed proper by such Board, and were further authorized to remove such trustees and fill all vacancies caused by death or otherwise.[343] The trustees of every institution, society, order, organization, or association were eligible to be incorporated by the name of the "Board of Trustees of

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[336] Ibid., § 28.04.120.

[337] Ibid., § 28.05.050.

[338] Ibid., § 28.76.130.

[339] Ibid., Tit. 9, § 987.010.

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[340] W. Va. Code of 1961 Ann., Ch. 18, § 1731.

[341] Ibid., Ch. 18, § 1872(22) and § 1905(19).

[342] _Ibid_., Ch. 18, § 3016. [343] _Ibid_., Ch. 35, § 3504.

_______________ University," (college or seminary). All powers granted to non-stock corporations were held by such Board.[344]

Tax exemptions. Real and personal property belonging to or held in trust for colleges or seminaries was exempt from taxation if the property was used exclusively for educational purposes. A corporation chartered for strictly educational purposes was exempt from the payment of the corporate license tax; however, an educational corporation was required to file an annual report with the Secretary of State providing proof of its educational purposes and activities for purposes of such exemption.[345]

Wisconsin

Tax exemptions. Incorporated colleges and universities enjoyed a tax-exempt status on all property up to eighty acres, and on all buildings, equipment, and leasehold interest in lands. The fact that college officers, faculty, employees, or students lived on the grounds did not make such property taxable. An institution was authorized to lease its lands for educational or charitable purposes without losing its exempt status if the income inured to the benefit of the institution or to charity. Private institutions of higher learning that were exempt from the tax on income were also exempted from the tax on tangible property.[346] A state registration fee was not required for busses owned and operated by a private college or any busses under contract to such institution if used exclusively for the transportation of students to and from college, including extra-curricular activities.[347]

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[344] Ibid., Ch. 35, § 3506. [345] Ibid., Ch. 11, § 678 and § 943.

[346] Wis. Stat. Ann., § 70.11 and § 77.54.

Scholarships, loans, and other student aids. A State Commission for Higher Educational Aids was formed and consisted of fifteen members who were appointed by and served at the pleasure of the Governor. Five members were nominated by the joint action of the Western Association of Independent Colleges and Universities and the Wisconsin Association of Presidents and Deans of Institutions of Higher Education, and represented all private institutions of higher learning in the state. The Commission was authorized to establish a program of grants for full-time resident students enrolled in any accredited, non-profit college or university in the state. A new program of honor scholarships could be awarded to qualified students to attend any approved, non-profit public or private college or university in the state as first-time, full-time freshmen effective July 1, 1966. Honor scholarships were prohibited for use in a program which would lead to a degree in theology or any other religious field.[348] Blind, deaf, or hard of hearing students enrolled in any college or university approved by the State Superintendent of Public Instruction were eligible for financial aid from the state for such attendance.[349] Loans to needy students were made to qualified residents for the purpose of attending any college or university in the state.[350]

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[347] Ibid., § 341.26.

[348] Ibid., § 39.023.

[349] Ibid., § 41.76.

[350] Ibid., § 49.42.

Rights and responsibilities of students. Any student involved in any hazing which resulted in or was likely to result in bodily harm to another person was subject to fine and imprisonment.[351]

Miscellaneous provisions. The Governor was authorized to set aside one day each year, by proclamation, as Arbor and Bird Day. All colleges could be requested to observe this day by planting trees or by holding suitable exercises for the purposes of the advancement of arboriculture, the promotion of a spirit of protection of birds and trees, and the cultivation of an appreciation of the same.[352] Institutions of higher learning were permitted to receive such items and objects which could be replaced on loan from the State Historical Society.[353] A cemetery salesman's license was not required of any persons selling grave spaces in a cemetery controlled and operated by an incorporated, denominational college.[354] Amateur boxing and sparring exhibitions sponsored and supervised by a college or university in which students of the college were participants were exempt from the regulations of the State Athletic Commission.[355] Railroads were authorized to provide free transportation or travel at reduced rates to officers and agents of incorporated colleges.[356] The president, professors, instructors, and their assistants at the colleges and universities were excused from serving as jurors.[357]

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[351] Ibid., § 941.33.

[352] Ibid., § 14.23.

[353] Ibid., § 44.07.

[354] Ibid., § 136.065.

[355] Ibid., § 169.22.

[356] Ibid., § 195.14.

[357] Ibid., § 255.02.

Wyoming

Corporate status. Bequests, devises, gifts, or grants of real or personal property to corporations for educational uses which in other respects were valid under the state laws could not be deemed invalid by reason of indefiniteness or uncertainty of the persons designated as the beneficiaries in such instrument.[358]

Tax exemptions. The lands and buildings of all benevolent societies or associations used for educational purposes were exempt from taxation if no profits inured to the benefit of any individual.[359]

State: academic provisions. The State Board of Education was responsible for the preparation of a list of approved institutions of higher learning whose graduates were eligible to receive state teaching certificates.[360]

Scholarships, loans, and other student aids. The Wyoming Higher Education Loan Plan was established for the purpose of providing residents of the state educational opportunities for attendance at institutions of higher learning by guaranteeing the loan funds for such attendance. Students could select institutions of higher learning in the state of Wyoming or in any other state if approved by the State Board of Education.[361]

Miscellaneous provisions. A college or university teacher was exempt from jury duty.[362]

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[358] Wyo. Stat. Ann., § 34-93 (1957).

[359] Ibid., § 39-10.

[360] Ibid., § 21-27.

[361] Ibid., § 21-108.2.

[362] Ibid., § 1-79.

Powers and Related Provisions for Non-Public Institutions Contained in the State Corporation Act

The statutes of all fifty states contained provisions for the incorporation of non-public institutions of higher learning under some type of non-profit corporation act. Several states provided separate provisions for institutions if they were incorporated under the auspices of private individuals, non-sectarian groups, or those incorporated under a denominational association or church. Twenty-six of the fifty states in the study had enacted specific legislation for the purpose of incorporating educational institutions; however, in other cases such provisions were made for institutions of higher learning in a separate chapter or subheading under the non-profit corporation act. The powers and related provisions of both acts were treated under separate headings.

Non-profit corporation acts. Institutions of higher learning in twenty-four of the states were incorporated under the general non-profit corporation acts, and such powers as the power to confer degrees, to suspend or expel students, and to appoint the president and professors of the institution were usually provided under the heading of *education* in the state code of statutes. The minimum number of persons required to form a corporation for educational purposes ranged from a minimum of one to five persons. The original corporators were required to select the first trustees; the minimum number of trustees allowed by the statutes was three members. The state of North Dakota was the only state which placed a maximum on the length of term for a trustee ; this maximum was a three-year term. The term was not specified in any other state. The state of New Jersey required that one member of the Board of Trustees of an institution of higher learning be a resident of the state.[363]

The powers granted to non-public institutions of higher learning incorporated under a non-profit corporation act were similar in each of the twenty-four states reported under this category. Three-fourths of the twenty-four states granted institutions the power to: (a) sue and be sued, complain and defend, and (b) have a corporate seal and alter the same at its pleasure. The trustees of incorporated colleges or universities in eighteen states were authorized to: (a) make contracts and incur liabilities; (b) borrow money at rates of interest determined by the trustees; (c) issue notes, bonds, and other obligations; and, (d) secure any of its obligations by mortgage on all or any portion of the institution's property, franchises, and income.

The following powers were provided in ten or less of the states in which the general non-profit corporation act was applicable: (a) lend money for the corporate purposes of the institution, invest and reinvest its funds, and take and hold real and personal property as security for the payment of the funds loaned or invested; (b) invest and reinvest funds in shares of stock of corporations or in obligations of the United States or any other government entity; (c) conduct the affairs of such corporation and exercise the powers of such corporate act in any state in the United States; (d) have perpetual succession of its corporate charter, unless otherwise specified in the articles of incorporation; (e) lend money to the employees other than the officers or trustees; (f) elect or appoint officers and agents, define their duties, and fix their compensation; (g) make and alter the by-laws; (h) dissolve as a corporate entity; (i) merge or consolidate with other non-profit corporations; (j) establish pension plans for all or various classes of its officers and employees; (k) expel or suspend members or associates; and, (1) fill vacancies on the board of trustees.

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[363] N. J. Stat. Ann., § 15: 1-7.

In the four states, acts which pertained directly to non-public colleges and universities were included with the provisions of the non-profit corporation act. The state of Vermont provided that any corporation organized for educational purposes was prohibited from acquiring or holding property of a total value of more than $30,000,000. The college or university was required to forfeit all excess over that amount to the state. The state was empowered to enforce the forfeiture of excess funds by initiation of a tort action in the courts.[364]

The failure of trustees to elect new members on the date designated was not deemed sufficient cause to dissolve a corporation; another day could be set for such election according to Section 3087 of the West Virginia Code of 1961.[365]

Trustees were provided a degree of protection in the state of Virginia; the statutes prohibited the initiation of legal action against a trustee after two years from the date of the questionable incident.[366]

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[364] Vt. Stat. Ann., Tit. 11, § 132.

[365] W. Va. Code of 1961 Ann., Ch. 18, Art. 12-22, § 3087.

[366] Code of Va. Ann., § 13.1-221.

A statute unique to the state of North Carolina granted the trustees the power to insure the life of an officer, contributor, student, or a former student of an incorporated educational institution if the death might result in financial loss to the institution.[367]

An annual report was required to be filed with the Secretary of State by all non-profit corporations in Utah[368] and Virginia.[369] The legislatures of Delaware,[370] Rhode Island,[371] Virginia,[372] and West Virginia[373] specifically retained the right to amend, alter, or revoke the corporation act at pleasure as a further means of control over all such corporations in the state.

The general powers of a non-profit corporation act were supplemented by specific acts pertinent to the operation of non-public institutions of higher learning usually contained in the statutes under the title education. These specific references were reported, wherever applicable, under the subheading of corporate status for each of the fifty states.

Educational corporation acts. Twenty-six states enacted legislation with reference to the incorporation of non-public institutions of higher learning. Such acts provided for a greater centralization of the enactments of powers and provisions. Such centralization of the statutory powers of an incorporated institution was expected to provide those persons working in the field of higher education with a more efficient means of knowing the powers granted by the state.

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[367] Gen. Stat. of N. C., § 55A-15. [368] Utah Code Ann., § 16-6-97.

[369] Code of Va. Ann., § 13.1-282. [370] Del. Code Ann., Tit. 8, § 283.

[371] Gen. Laws of R. I., § 7-1-13. [372] Code of Va. Ann., § 13.1-291.

[373] W. Va. Code of 1961 Ann., Ch. 18, Art. 12-22, § 3020.

The method of incorporating an educational institution of higher learning was similar for a majority of the states. Section 29004 of the Education Code of California contained provisions which were commonly required when one or more persons sought to incorporate for the purpose of establishing a college or university. The common provisions included: (a) the name of the corporation, (b) the purpose of the corporation, (c) the principal location of business in the state, and (d) the names, residences, and number of its directors at the time of incorporation.[374] The state of Ohio required certain minimum standards to be met prior to issuance of a certificate of authorization from the State Board of Education. The standards included: (a) adequate housing for the declared field or fields of education; (b) a capital fund, not including tuition and fees, of $500,000 for a four-year senior college and $1,000,000 for an institution offering a five-year program; and, (c) faculty, library, laboratories, and other facilities which meet the minimum standards published by the State Board of Education.[375] A similar classification system was followed in Michigan, except a fourth category was established for those institutions established and maintained by any ecclesiastical or religious order or society which retained control of an institution of higher learning for denominational purposes.[376] The states of Indiana and Ohio made special provisions for the incorporation of institutions under denominational control by establishing a separate classification for the incorporation of institutions by religious groups. The states generally indicated the minimum number of trustees an educational institution could maintain, but provided for the trustees to increase or diminish their numbers as deemed desirable by such board. An amendment to the by-laws or, if so stipulated in the articles of incorporation, an amendment to the charter provided for such changes in the number of trustees.

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[374] Calif. Educ. Code, § 29004.

[375] Page's Ohio Rev. Code Ann., § 1713.03.

A primary concern of those interested in non-public higher education was the powers and limitations placed upon the non-public college, university, or seminary. Each of the twenty-six states containing provisions for the incorporation of non-public institutions of learning was searched to determine the extent to which the various powers were contained in the statutes of each state. The power to confer degrees was the most frequent power listed, but only fifteen states made such provision. It was important to note that a number of the states authorized the power to confer degrees only after approval that such institution met the standards established by the State Board of Education. Some states provided that the power to grant degrees was given only after the institution had been in operation for two years. Eleven states granted the power to take and hold property by gift, devise, and bequest. The power to appoint a president of the institution and any number of professors, tutors, and other agents and officers was contained in eleven states. The power to buy, sell, or mortgage its property, to change its name and amend its charter, and to fix the term of trustees and establish the number to serve on the board was granted to institutions in nine of the states. Seven states included the power to prescribe the courses of study to be pursued. A special power was granted to institutions of higher learning in the states of Oklahoma and South Dakota. Any educational institution was empowered to add mechanical shops or machinery, or lands for agriculture and any buildings thereon. Single references were contained in the statutes of South Dakota which provided for the determination of tuition rates and in Tennessee which provided for institutions under denominational control specific power to determine admission requirements. Educational corporations in Oklahoma were permitted to hold that amount of real property considered reasonably necessary to carry out the purposes of the corporation.[377] Real and personal property could be held up to $5,000,000 in the state of Massachusetts; however, such limits were subject to alteration by the legislature.[378]

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[376] Mich. Stat. Ann., § 21.172.

Several states stipulated some control over the application for incorporation or revocation of the charter, or the requirement of an annual report. In New Hampshire the State Board of Education established the standards for the approval of institutions seeking to incorporate and evaluated the applications on the basis of: (a) the adequacy of the proposed buildings and instructional facilities, (b) the qualifications of the faculty, (c) the provisions for the safety and well-being of the students, (d) the character of the curricula, and (e) the financial adequacy of the institution.[379] The endorsement of the Commissioner of Education was required to appear on the certificate for incorporation presented to the Regents of the University of New York prior to the granting of a charter by the Regents.[380] Several states required the submission of annual reports to the Secretary of State or the Commissioner of Corporations and Securities. The trustees were required to submit a report which contained: (a) the location of the institution, (b) the name of the institution, (c) the date incorporated, (d) the authority under which incorporated, and (e) the amount of capital stock, if any, and (f) the purpose of the educational corporation.[381] The trustees of institutions in the state of Oklahoma were required to provide a written report to members of the association for which they were acting. The report included the general affairs of the institution plus all real and personal property and the condition thereof, including property held in trust.[382] The certificate of approval granted to institutions in the state of Illinois was subject to revocation for violation of conditions governing said institution or fraud. The Superintendent of Public Instruction was authorized to investigate and conduct hearings prior to making a final decision on such revocation.[383]

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[377] Okla. Stat. Ann., Tit. 18, § 543.

[378] Mass. Gen. Laws Ann., Ch. 180, § 9.

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[379] N. H. Rev. Stat. Ann., Tit. 22, § 292:8-f.

[380] N. Y. Stock Corp. Law, § 6. [381] Ga. Code Ann., § 22-1703.

[382] Okla. Stat. Ann., Tit. 18, § 544.

Several states made provisions which were unique in comparison to the remainder of the fifty states. The state of Oklahoma granted any corporation organized for educational purposes the right to own stock and carry on any and all types of related business enterprises as a means of gaining additional funds which were to be used only for educational purposes.[384] Section 17-1406 of the Kansas Statutes held that the property of an educational institution could be applied to purposes of education other than those in the charter.[385]

Institutions of higher learning in Colorado were permitted to dissolve by a vote of a majority of the members and filing the results of the decision with the Secretary of State.[386] Educational institutions under the patronage of a religious denomination in the state of Illinois were authorized to dissolve. All funds or property were required to be returned to the donors if written conditions so stipulated, and the remaining property was subject to sale in order to pay the debts. Any balance was to remain the property of the religious denomination in charge.[387]

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[383] Smith-Hurd Ill. Ann. Stat., Ch. 10 4/5, §§ 125 - 135.

[384] Okla. Stat. Ann., Tit. 11, § 549.

[385] Kans. Stat. Ann. Corrick, § 17-1406.

[386] Colo. Rev. Stat., § 31-20-4 (1963).

[387] Smith-Hurd Ill. Ann. Stat., Ch. 32, § 201.

CHAPTER IV

THE ANALYSES OF THE POWERS CONTAINED IN THE CHARTERS OF FORTY-EIGHT REPRESENTATIVE NON-PUBLIC INSTITUTIONS OF HIGHER LEARNING

The purpose of this chapter was to report the analyses of the charters of a stratified sample of four-year, non-public institutions of higher learning. Four chronological periods were established between the years 1636 and 1965. The periods followed those established by Sanford in the book The American College, in which the development of the American universities was traced from the founding of Harvard College in 1636 to the year 1962.[1] The four periods used in this chapter were (1) the establishment of the first college in America to the end of the Civil War, 1636-1865; (2) the post-Civil War period to the end of World War I, 1866-1918; (3) the post-World War I period to the end of World War II, 1919-1945; and (4) the post-World War II period to the time of the study, 1946-1965. All non-public colleges and universities in the United States were classified under one of the four periods as determined by the date of founding of each institution.[2] A 5 per cent random sample of the charters of the non-public institutions within each of the four chronological periods was used for purposes of this analyses.

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[1] Nevitt Sanford (ed.), The American College (New York: John Wiley & Sons, Inc., 1962), pp. 915-936.

[2] United States Office of Education, "Education: American Colleges and Universities," The World Almanac and Book of Facts, 1966, Luman H. Long (ed.) (New York: New York World-Telegram and The Sun, 1966), pp. 705-718.

Analyses of Charters

The total number of charters selected through the random sampling procedure was forty-eight. Twenty-six of the fifty states in the study were represented in this sampling. Seventeen powers conferred by charter upon non-public colleges and universities by state governments were identified from the charters examined in the sample.

The powers contained in the charter of each of the institutions in the sample were tabulated and then summarized in Table III pp. 172 ff. The powers were placed in rank order from the most frequent power conferred in the charter to the least frequent provided power. The amended powers were included in the analyses of the charters; however, no attempt was made to analyze the by-laws of non-public institutions of higher learning since it was not included in the purpose of the study.

Findings by powers conferred. The most frequent power contained in the charters of the non-public institutions was the power to make and alter all by-laws, rules, and regulations for the government of the corporation. Thirty-two of the forty-eight charters, 67 per cent of the non-public colleges and universities in the study, were provided this power by the state.

The power to confer degrees and other literary honors and rewards was provided in twenty-six of the charters. This number represented 54 per cent of all of the non-public institutions in the sample. Seven of the twenty-six states held this power as a result of an amendment to the charter of the institution.

TABLE III

POWERS CONFERRED BY CURRENT CHARTER UPON FORTY-EIGHT REPRESENTATIVE NON-PUBLIC COLLEGES AND UNIVERSITIES, 1965

Powers Granted by Current Charter	Period I 1636-1865		Period II 1866-1918		Period III 1919-1945		Period IV 1946-1965		Total 1636-1965	
	No. of Charters	Per Cent	No. of Charters	Per Cent	No. of Charters	Per Cent	No. of Charters	Per Cent	No. of Charters	Per Cent
1. To make and alter all by-laws, rules and regulations for the government of the corporation.	11	73	12	60	5	56	4	100	32	67
2. To confer degrees and other such literary honors and rewards as the trustees may judge proper.	11	73	7	35	6	67	2	50	26	54
3. To acquire, receive, use, hold, lease or purchase necessary real estate and personal property.	11	73	8	40	6	67	1	25	26	54
4. To sell, lease, mortgage, and dispose of property of every kind.	7	47	8	40	5	56	1	25	21	43
5. To have the power to sue and be sued; plead and be impleaded.	8	53	7	35	3	33	1	25	19	40
6. To acquire and take by deed, devise, gift, donation, endowment, annuity, bequest or otherwise, any property for the purpose of the corporation and to execute and administer trusts for this purpose.	6	40	9	45	3	33	0	0	18	37

TABLE III (continued)

Powers Granted by Current Charter	Period I 1636-1865		Period II 1866-1918		Period III 1919-1945		Period IV 1946-1965		Total 1636-1965	
	No. of Char- ters	Per Cent	No. of Char- ters	Per Cent	No. of Char- ters	Per Cent	No. of Char- ters	Per Cent	No. of Char- ters	Per Cent
7. To have a common seal and alter it at pleasure.	7	46	6	30	3	33	1	25	17	35
8. To appoint or elect the president, professors, and other personnel of the college; determine the duties, salaries, and tenures.	7	46	4	20	3	33	2	50	16	33
9. To have all the powers incident and necessary to carry out the objects and purposes of the corporation.	5	33	7	35	2	22	2	50	16	33
10. To prescribe the course or courses of study; determine the rules of discipline to be observed.	3	20	6	30	4	44	1	25	14	29
11. To fill vacancies on the Board of Trustees.	7	46	3	15	2	22	2	50	14	29
12. To borrow money, issue bonds and notes, make contracts and to secure its obligations by encumbering or pledging any or all property of the corporation.	4	27	6	30	2	22	1	25	13	27
13. To appoint all such officers and other agents and to remove the same.	4	27	1	5	3	33	1	25	9	19

TABLE III (continued)

Powers Granted by Current Charter	Period I 1636-1865		Period II 1866-1918		Period III 1919-1945		Period IV 1946-1965		Total 1636-1965	
	No. of Charters	Per Cent	No. of Charters	Per Cent	No. of Charters	Per Cent	No. of Charters	Per Cent	No. of Charters	Per Cent
14. To exercise any right, privilege, or powers given or authorized by the incorporation law of the state.	2	13	4	20	2	22	0	0	8	17
15. To amend any articles of incorporation which shall be in accordance with the laws of the state and the United States.	3	20	1	5	1	11	2	50	7	15
16. To erect, repair, alter or maintain any building of any kind for the purposes of the corporation.	3	20	2	10	0	0	1	25	6	13
17. To appoint and constitute special committees of the Board of Trustees with authority to carry out delegated duties.	1	7	2	10	1	11	1	25	5	10

NOTE: The per cent columns represent per cent of sample collected by chronological period. The total number of charters sampled in each period is as follows: (a) Period I - 15 charters; (b) Period II - 20 charters; (c) Period III - 9 charters; (d) Period IV - 4 charters; and (e) Total - 48 charters.

The power to acquire, receive, use, hold, lease, or purchase necessary real estate and personal property was contained in twenty-six of the charters. This number represented 54 per cent of all of the institutional charters analyzed. Nearly three-fourths of all institutions reported in Period I contained this provision in the charter.

The power to sell, lease, mortgage, and dispose of property of every kind was contained in a majority of the charters in Period III; however, the overall frequency revealed only 43 per cent of the non-public colleges and universities included this specific power.

The power to sue and be sued was contained in the charters of only nineteen of the forty-eight charters. However, a majority of the states in Period I contained this provision.

A total of 37 per cent of the institutional charters contained the power for the corporation to acquire or take property by deed, devise, gift, donation, endowment, or annuity and execute and administer the trusts for the purposes established. None of the four charters in Period IV contained such power.

The charters in the sample provided the power to have a common seal and alter it at pleasure for seventeen of the institutions. The power was reported most often in Period I.

The charters of one-third of the institutions included in the study contained authority for the Board of Trustees to appoint or elect the president, professors, and other personnel of the college. The charters further granted the power to determine the duties, salaries, and tenures of such persons.

One-third of the charters contained provision for a broad, general type of power. Through this power the state granted the institution all powers incident and necessary to carry out its corporate objects and purposes.

Fourteen charters granted the Trustees the power to prescribe the course or courses of study and to determine the rules of discipline to be observed in the college or university. This figure included 29 per cent of the forty-eight charters analyzed.

The Board of Trustees was granted the power to fill vacancies created by resignation, death, or other causes. This power was included in fourteen of the charters representing 29 per cent of the institutions in the sample.

More than one-fourth of the charters granted institutions the power to borrow money, issue bonds, and make contracts. The charter also authorized the Trustees to secure its obligations by encumbering or pledging any or all of the property of the incorporated institution.

The provision of the power to appoint all officers and agents and to remove the same at pleasure was contained in only nine of the forty-eight charters analyzed. Only one of the twenty institutional charters in the period 1919-1945 contained such provision.

The power to exercise any right, privilege, or power authorized by the incorporation law of the state was indicated in eight charters. None of the four charters in Period IV contained this provision.

The granting of the specific power to amend the charter of an institution was provided in only 15 per cent of the institutions sampled. Period II and Period III each contained but one institution which included this provision in their charter.

Six charters provided the power to erect, repair, alter or maintain any building for the purposes of the college or university. Five of the six charters which contained this power were reported in the first two chronological periods designated.

The least frequently stated power was the power of the Trustees to appoint special committees of the Board and grant such committees the authority to carry out such delegated duties. This power was contained in the charters of but five of the forty-eight institutions included in the sampling.

For purposes of further analyses, the seventeen powers granted by the state to incorporate colleges and universities were classified under five activity areas deemed essential, according to Bakke,[3] to the functioning of any social organization. These activities or essential processes were (1) identification activities, such as the adoption of an official seal or emblem; (2) perpetuation activities, including actions of the Board or a committee; (3) internal control activities, including the procedure for internal change and the auditing of funds; (4) external control activities, such as operating through outside agencies to bring about change; and (5) workflow activities, including curriculum development and other related areas.

The legal powers granted to colleges and universities by the states provided primarily for the perpetuation of the institution. Nine of the seventeen powers were classified under the area of perpetuation activities. The powers were listed as number 3, 4, 5, 6, 9, 12, 13, 14, and 16 in Table III on pp. 172 ff. These powers were primarily concerned with the acquisition and use of land; the sale, lease, or mortgage of real and personal property; the issuance of bonds; the making of contracts; and the borrowing of money. The next most frequent grouping of powers was classified under the area of workflow activities. There were three powers which were so classified. The power to confer degrees and other literary honors, the power to appoint the president and faculty, and the power to prescribe the course or courses of study were considered basic to the development of the workflow activities of an institution of higher learning. The power to make and alter by-laws, rules, and regulations was the most frequent power contained in the charters in Table III and was classified as the only entry under the heading of internal control activities. This control provided for the internal operation of the college or university. One power was classified under the area of identification activities. This power provided for the institution to have a common seal and alter the same at pleasure. The seal provided the organization with a symbol for purposes of identification. The provisions for the external control activities were limited to the power which provided for an institution to exercise any right, privilege, or powers granted by the state through the passage of new incorporation acts. The primary function of the state in providing legal powers for the operation of non-public colleges and universities was to ensure the perpetuation of the institution and provide for the continuation of the program of the institution.

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[3] W. Wright Bakke, "Concept of Social Organization," Modern Organizational Theory, Mason Haire (ed.) (New York: John Wiley and Sons, 1959), p. 37.

CHAPTER V

PRINCIPLES OF CASE LAW RELATED TO NON-PUBLIC COLLEGES AND UNIVERSITIES

The purpose of this chapter was to present principles of law enunciated by the courts which were pertinent to non-public institutions of higher learning. The selected cases were classified under four main areas of administrative responsibility. The categories were (1) public relations and third parties, (2) funds and facilities, (3) president and faculty, and (4) students and programs. The common areas of concern to administrators and Trustees were treated within each category. Persons interested in pursuing the area of college case law to a greater extent than herein presented are referred to the book, _The Colleges and the Courts Since 1950_, by M. M. Chambers of Indiana University.[1] Chambers was a recognized writer in the field over the past thirty years and has treated the broad aspects of both public and non-public higher education.

Public Relations and Third Parties

The major portion of the litigated cases involve persons or agencies outside of the immediate non-public college or university campus. This section reports the principles of law related to state supervision, use of the institutional name, zoning regulations, power of eminent domain, donated lands, easements, demand for records, and charitable immunity.

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[1] M. M. Chambers, _The Colleges and the Courts Since 1950_ (Danville, Illinois: Interstate Printers & Publishers, Inc., 1964).

Charter rights. It is well-settled law that the charter of a non-public corporation is a legal contract between the state and the corporation or incorporators. Since the Constitution of the United States prohibits the impairment of contracts, non-public corporations are not subject to visitation, control, or change by the state except in the exercise of the police power.[2] As early as 1819, the principle was established in the Dartmouth College case[3] that the corporate charter is a contract between the state and the non-public institution of higher learning and cannot be abrogated without the consent of the institution. In this famous United States Supreme Court decision, it was established that a dual system of higher education in the United States should prevail. The contractual nature of the charter of non-public institutions of higher learning continues to play a significant role in the decisions of the courts even today. The principle of law followed by the courts is that colleges or universities founded by private enterprise and endowed or supported by private donations are classified as charitable corporations. Furthermore, the state has the legal authority to reserve the right to amend or revoke the charter of any non-public institution of higher learning at the time of the issuance of such charter. The college or university is then required to adhere to the statutory amendments to the charter passed by the legislature. In Berea College v. Kentucky[4] in 1908, the legislature passed an act which contained a provision making it unlawful for a corporation to operate a college where persons of the Caucasian and Negro races were both received as students for instruction. Berea College violated the law. The United States Supreme Court held that the full power of amendment was reserved to the legislature. A power reserved to the legislature which did not defeat the object of the corporate grant was valid.

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[2] 18 C.J.S., Corporations § 18 (1939).

[3] Dartmouth College v. Woodward, 4 Wheat. 518 (1819).

[4] 211 U.S. 45 (1908).

State supervision. Supervision by the state exists under three primary state powers growing out of the general police power of the state: namely, the granting of power to confer degrees, the licensing of certain professions, and the making of rules and regulations relative to building codes and fire regulations. In a number of states, non-public institutions desiring the power to confer degrees are required to comply with the minimum standards developed by the State Boards of Education. Such references are contained in the statutes of the various states elaborated in Chapter III of the study.

A 1936 case in the state of New York[5] treated the constitutionality of a New York statute which provided for regulation of the power to confer degrees by an administrative body, namely, the Regents of the University of New York. The court held the statute constitutional and provided the following reasoning.

> While the legislature may reasonably regulate education in all of its branches, and may require compulsory education, it cannot go beyond mere regulation and impose arbitrary or unreasonable restraints. Regulation does not involve the power to absolutely prohibit or suppress private schools, colleges, or other institutions of learning. Regulations which are reasonable and which

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[5] Institute of the Metropolis, Inc. v. University of State of New York, 159 Misc. 529, 289 N.Y. Supp. 660 (Sup. Ct.), aff'd, 249 App. Div. 33, 291 N.Y. Supp. 893 (1936).

> are designed to create a proper standard on the part of those who publicly hold themselves out as affording educational facilities, are not arbitrary, nor do they tend to suppress educational institutions, nor do they amount to class legislation where the conduct of such business is open to all who come up to the reasonable standard which may be adopted.[6]

The degree of control placed over non-public institutions under the provisions of general rules and regulations pertaining to such items as building codes and fire regulations were enumerated in the statutes reported in Chapter III of the study. No case law was treated in this study relative to these general regulations of the state's police power.

Research in the area of state licensing practices was limited; however, extensive study of licensing boards in the fifty states was being conducted in the Bureau of Educational Research at the University of Denver under the auspices of a United States Office of Education small contract grant.[7] The sceduled completion date of this research was December, 1966.

Use of institutional name. The right of a non-public college or university to exclusive use of its corporate name was the subject of several litigated cases. The principle of law is that the institution can receive injunctive relief if the commercial enterprise using such name reflects directly upon the non-public institution. The Trustees of Columbia University v. Axenfield[8] was a case in point against the defendant conducting a business college under the name of the Columbia Educational Institute. The court held that the name of the institute was adopted by its founders with the deliberate design of conveying to the public the idea that such institute was identical with or associated with Columbia University. In Cornell University v. Messing Bakeries[9] the court held that Cornell University was entitled to relief from the bakery which sold bread under the trademark of "Cornell Bread" or "Cornell Loaf" and placed such bread in wrappers bearing red pennants and red scrolls on the outside. A year later, the courts granted the bakery the use of the name "Cornell Recipe Bread" but required the bakery not to use the pennants, flags, scrolls, and other symbols indicative of a college on the bread wrappers.[10] In Yale v. Benneson[11] the court held that the confusion of names must be such that any reasonable person was likely to be misled. The evidence failed to show that the use of the name "Yale" on Yale Motor Inn would be likely to deceive the public or cause confusion in the mind of the public. The Vassar College case[12] was litigated over the use of the name "Vassar Chocolates" by a biscuit company. The court held that the college had no such property right in its name and insignia and that the injury, if any, was psychological rather than real. The court was responsible for determining each case on its individual merits when the name of an institution of higher learning was involved.

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[6] Id. at 666.

[7] R. Molinari, A Comparative Study of State Licensing Boards for School Administration and Other Selected Professions, United States Office of Education, Small Contract Project #6-178 (in progress at the University of Denver, Denver, Colorado, 1966).

[8] 136 Misc. 831, 241 N.Y. Supp. 4 (Sup. Ct. 1930).

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[9] 135 N.Y.S.2d 101 (Sup. Ct. 1954).

[10] Cornell Univ. v. Messing Bakeries, 285 App. Div. 490, 138 N.Y.S.2d 280, aff'd, 309 N.Y. 722, 138 N.E.2d 421 (1955).

[11] 147 Conn. 254, 159 A.2d 169 (1960).

[12] Vassar College v. Loose-Wiles Biscuit Co., 197 Fed. 982 (W.D. Mo. 1912).

Zoning regulations. Requests to erect educational and religious buildings in areas zoned residential are generally approved. In Iowa, Wartburg College applied for a permit to erect a married students' dormitory to house twenty student families. This dormitory was to be located in a single family residence area. The opinion of the court held[13] that the dormitory would serve both an educational and a religious purpose and was, therefore, permitted to be located in a single family residence district.

Zoning laws may not discriminate between public and non-public educational institutions. In a New York case,[14] the erection of stands for seating of spectators adjacent to the athletic field of Adelphi College was the subject of litigation. The zoning board approved only one-half of a four thousand seat request for expanded facilities. The court held that reasons such as the potential increase in traffic and parking were not matters for consideration by zoning authorities. Further, the court held that the zoning board sought to deny the college that which public schools could conceivably do without zoning board approval. The court held that an ordinance which discriminated between a public school and a private school as to an educational use was invalid.

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[13] Schueller v. Board of Adjustment, 250 Iowa 706, 95 N.W.2d 731 (1959).

[14] Property Owner's Ass'n v. Board of Zoning Appeals, 2 Misc. 2d 309, 123 N.Y.S.2d 716 (Sup. Ct. 1953).

Zoning which prohibits the existence of a college or certain expansion thereof is constitutional if the zoning ordinance bears a rational relationship to some impairment of public safety, health, morals, or the general welfare. A case in the state of New York[15] resulted from the denial of the Board of Zoning Appeals to approve a location in a residence area for Hofstra College. An ordinance permitted a non-profit college in such a district when authorized by the Board as a special exception. The court reiterated the holding of the case of Adelphi College in stating that traffic problems could not be considered by the zoning board. The board was further restricted from making a judgment as to the appropriateness of the particular location chosen by college officials. Officials of Hofstra College presented evidence to show that the college would not have an adverse effect upon the public health, safety, morals, and welfare of the area. Except for appropriate restrictions imposed in a grant of zoning, the licensing of a college to use land for conducting an institution of higher learning authorized the college to engage in any legitimate activity and enroll any number of students that could reasonably be accommodated.

In another case, property owners living adjacent to the land of the American University sought and were granted a rezoning of the area. The purpose of the rezoning was to prevent the university from erecting a hospital on the campus grounds. The court held[16] that hospitals were a natural outgrowth of universities and the zoning bore no reasonable relationship to the public health, safety, morals, or general welfare of the residents of the area. In the opinion of the court, the university had been deprived of its use of property since all arguments for rezoning had been based upon mere speculation and conjecture. In Long Island University v. Tappan,[17] the residents of Bookville passed a zoning ordinance which attempted to prevent the continuance of the university on its own land. The university appealed to the courts. The court held that the university must adhere to the town ordinances; however, the zoning ordinance was declared void by the court since it prohibited the university from exercising the charter rights under which it was established.

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[15] Hofstra College v. Wilmerding, 24 Misc. 2d 248, 204 N.Y.S.2d 476 (Sup. Ct. 1960).

[16] American Univ. v. Prentis, 113 F. Supp. 389 (D.D.C. 1953), aff'd, 214 F.2d 282 (D.C. Cir.), cert. denied, 348 U.S. 898 (1954).

Power of eminent domain. The power of eminent domain is a state power which according to the state constitutions cannot be abrogated to any corporation. In a Connecticut case[18] in 1913, the legislature had granted the Connecticut College for Women the authority to acquire land and the power of condemnation, if necessary, for such acquisition. The court held that the state could not delegate power of eminent domain to a private corporation for private purposes since such action violated the provisions of the state constitution. The constitution authorized the taking of land only for "public use." The court maintained that the legislature could delegate such power to a private corporation only when the taking of such land was of great advantage to the community and when the public had equal rights to the benefits of such condemnation without unreasonable discrimination. The act of the legislature in regard to the Connecticut College for Women was held unconstitutional since a major part of the public in the town was not expected to enjoy the benefits thereof. In the case of the University of Southern California v. Robbins[19] the court held that the university could exercise the power of eminent domain despite the fact that the institution was a private corporation. The primary consideration was whether the university provided the public with the use or enjoyment of the condemned property taken. The court held in favor of the university since the institution was open to all residents of the state possessing the required educational qualifications.

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[17] 202 Misc. 956, 113 N.Y.S.2d 795 (Sup. Ct. 1952), aff'd, 281 App. Div. 771, 118 N.Y.S.2d 767, aff'd, 305 N.Y.893, 114 N.E.2d 432 (1953).

[18] Connecticut College for Women v. Calvert, 87 Conn. 421, 88 Atl. 633 (1913).

Donated lands. Colleges and universities are required to follow the provisions of the state constitution or statutes in relation to deeded lands. A recent case[20] is in point. Mississippi College received a farm by conveyance from a deceased benefactor; the state constitution permitted the holding of such land for a period not to exceed ten years. The college had not sold the land at the end of the ten-year period; however, the court held that the college could have sold such property within the time limit established. The fact that the institution was a bona fide educational and religious institution was not controlling and did not justify the court making any exception to the expressed provision of the state constitution. The land, therefore, reverted to the heirs of the deceased according to the constitutional provision.

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[19] 1 Cal. App. 2d 523, 37 P.2d 163 (Ct. App. 1934), cert. denied, 295 U.S. 738 (1935).

[20] Mississippi College v. May, 235 Miss. 200, 108 So. 2d 703 (1959).

To the same effect, a case[21] in South Carolina in which the question of the right of the grantor's heirs to property vacated by Furman University on two old campuses was raised when Furman relocated on a new campus site. The court held that the grantor's heirs had no right to such property and the university was permitted to sell the two former campus sites. The purpose of the deed, according to the court, was the establishment of a school at a point of easy access to the community. The new location met such requirement. The court assumed the responsibility for determining the intent of the grantors if such persons were still living at the time the decision to change arose.

Power to grant easement. Colleges have authority to grant a valid easement. In a case[22] in the state of Kansas, land formerly owned by Park College became the center of litigation when the new owner attempted to interfere with power lines erected across the property. In the 1958 court action, the court held that the college had authority to grant the power and light company an easement across such property; therefore, such right of easement continued in effect under the new owner.

Demand for records. The release of records by a college or university was subject to reasonable requests of a third party. In Chapman

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[21] Furman Univ. v. McLeod, 238 S.C. 475, 120 S.E.2d 865 (1961).

[22] Kansas City Power & Light Co. v. Riss, 319 S.W.2d 262 (Mo. 1958).

v. Maren Elwood College[23] the representative of the Veterans Administration brought a proceeding to enforce an administrative subpoena issued to the college demanding several classes of records which covered a period of eight years. The college provided sufficient evidence to prove that the demand was, in fact, unreasonable since the college records were not required to be retained for that long a period of time. The court held in favor of the college. The need for caution on the part of colleges and universities when handling the confidential records of students was illustrated in a case recently reported in California. The name of a student was forged on a request for a transcript of record at San Diego State College. The court held[24] that the records are private and that circulation may be restricted since a student may be injured by the circulation of his school records.

Charitable immunity. The doctrine of charitable immunity which protected charitable corporations, including a non-public college or university, from law suits for their negligent acts or the negligent acts of their employees is unsettled in the courts of the various states. The trend is rapidly moving in the direction of the rescinding of the doctrine of charitable immunity. The basis for such change is the avilability of insurance to protect such institutions in cases where the institution is declared liable.

A landmark case in the repudiation of the doctrine of charitable immunity is the President and Directors of Georgetown College v.

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[23] 225 F.2d 230 (9th Cir. 1955).

[24] People v. Russell, 29 Cal. Rptr. 562, 214, C.A.2d, 445 (1963).

Hughes.[25] The case was litigated in the United States circuit court in the District of Columbia in 1942. The impact of the opinion of Justice Rutledge in the Georgetown case was best reported in the book Handbook of the Law of Torts,[26] which stated that Justice Rutledge

> reviewed all of the arguments in favor of the immunity, and demolished them so completely as to change the whole course of the law. It has been followed by a deluge of decisions holding that there is no immunity at all, and that a charity is liable for its torts to the same extent as any other defendant.

The court held the college liable for the injury negligently caused by an employee acting in the course of duty.

Recent cases illustrated the holdings of the courts in regard to the negligent acts, or torts, of non-public institutions of higher learning. A recent case[27] in the state of Washington involved the injury of a dean of women when a screen in the chapel fell upon her. The court found the college liable since an employer was held to have a non-delegatable duty to furnish the employee with a reasonably safe place to work. Another case[28] of negligence was litigated in the courts of Georgia in 1964. A student drowned while attending a required swimming class for unskilled swimmers. An action was brought for wrongful death. The court stated that as a general rule a private charitable corporation was not liable for negligence of its officers and employees if they were competent. State policy prohibited the use of trust funds for such liability; however, tuition fees were not considered trust funds and were, therefore, subject to use for the payment of such claim. The state of Pennsylvania was one of the last to hold to the doctrine of charitable immunity; however, in a 1965 case, the state supreme court overturned the doctrine in an opinion reversing a lower court decision.[29] Two hospital employees caused a patient to fall and break her ankle. The court declared that if there was any justification for the charitable immunity doctrine when it was first announced, it has lost that justification today in holding the hospital, a non-profit, charitable institution, negligent.

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[25] 130 F.2d 810 (D.C. Cir. 1942).

[26] William L. Prosser, Handbook of the Law of Torts (second edition; St. Paul, Minnesota: West Publishing Company, 1955), p. 787.

[27] Guy v. Northwest Bible College, 64 Wash. 2d 116, 390 P.2d 708 (1964).

[28] Morehouse College v. Russell, 109 Ga. App. 301, 136 S.E.2d 179 (1964).

The college was not held negligent where a visitor to the campus was injured by the collapse of a wall of a new building which was being erected. The court held[30] that the injured party was a trespasser for he did not have the college's permission to be around the library building. The college owed the visitor a duty of care only after his position of peril was actually discovered.

Funds and Facilities

A major problem facing administrators and Trustees of non-public colleges and universities has long been the necessity of securing adequate financing. Most states prohibit direct appropriations of public funds to non-public institutions but provide a form of indirect aid through legislation which grants various degrees of tax exemption. The courts, however, are called upon on numerous occasions to determine the right of non-public institutions to benefit from various types of tax exemptions. The federal government provided a major source of financial aid to non-public colleges and universities with the passage of the 1963 and 1965 higher education bills. The constitutionality of providing direct aid to non-public institutions of higher learning is also being challenged in the courts.

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[29] Flagiello v. Pennsylvania Hospital, 417 Pa. 486, 208 A.2d 193 (1965).

[30] Bradford v. Clifton, 379 S.W.2d 249 (Ky. 1964).

Tax status by right of charter. Charters of non-public colleges or universities which provide for a tax exemption of all property will be upheld by the courts. A case in point was Washington University v. Bauman,[31] in which the Missouri court held that the charter provision of the university exempting the institution from taxation could not be impaired by passage of subsequent constitutional or statutory acts prohibiting such exemption. An earlier case[32] in the state of Colorado further illustrated the point. The court held that the charter became a binding contract between the corporation and the state which could not be impaired by subsequent legislative acts. A 1953 Missouri court opinion concurred with the holdings of the earlier decisions.[33]

The legislature may not grant any special privilege of tax exemption for non-public institutions if existing legislation prohibits such exemptions. Whitman College had been granted a tax-exempt status on all institutional property by special act of the Washington legislature; however, an earlier legislative act prohibited the legislature from granting exemption from taxatinn by special privileges. The United States Supreme Court held[34] that the tax exemption of the college by special privilege was beyond the authority of the legislature to grant. The court further held that the special privilege was void and Whitman College was held subject to taxation.

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[31] 341 Mo. 708, 108 S.W.2d 403 (1937).

[32] County Comm'rs v. Colorado Seminary, 12 Colo. 497 Pac. 490 (1889).

[33] State v. Trustees of William Jewell College, 364 Mo. 199, 260 S.W.2d 479 (1953).

The change of the original name of an incorporated college or university will not nullify the tax-exempt status of such institution. A case in point was the City and County of Denver v. Colorado Seminary[35] in which the court held that the change of the name of Colorado Seminary to the University of Denver did not affect the tax-exempt status of the institution. This point of law was further upheld in a similar case in the Missouri court.[36]

Tax status of the housing of the president and faculty. The home of the president of a non-public institution will be held tax-exempt. The reasoning of the courts hold that such residences are used for the furtherance of the educational purposes of the institution. A case which illustrates the reasoning of the courts involved the University of Pittsburg in appeal for a judgment as to the tax-exempt status of the residence of the Chancellor of the university. The institution was located two and one-half miles from the campus. The facts indicated that the residence was used to entertain students, faculty, trustees, donors, visitors, and distinguished guests. The court held[37] that the fact that the residence was not located on the campus was not a controlling factor in the determination of such exempt status. The chancellor's residence was declared tax-exempt since the evidence sustained the finding that the primary use of the residence was in the furtherance of the general purpose of the university. Two earlier cases in which the courts held similarly were in the states of Nebraska[38] and New York.[39] A unique case in point was raised in the New Jersey court. The Institute for Advanced Study was a non-profit corporation organized for the purpose of post-doctoral study. There was no resident student body, and instruction was limited to scheduled seminars. The question was raised whether the residence of the Director of the Institute was tax-exempt under the New Jersey statutes. The statutes provided that buildings used for colleges and schools were exempt. The court held[40] the residence of the Director tax-exempt and reasoned that since there had been greater emphasis placed upon individual study in the colleges, the Institute possessed the attributes necessary for tax exemption as an institution of learning.

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[34] Berryman v. Board of Trustees, 222 U.S. 334 (1912).

[35] 96 Colo. 109, 41 P.2d 1109 (1934).

[36] Washington Univ. v. Bauman, 341 Mo. 708, 108 S.W.2d 403 (1937).

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[37] Appeal of Univ. of Pittsburg, 407 Pa. 416, 180 A.2d 760 (1962).

[38] Doane College v. County of Saline, 173 Neb. 8, 112 N.W.2d 248 (1961).

[39] In re Syracuse Univ., 124 Misc. 788, 209 N.Y. Supp. 329 (Sup. Ct.), aff'd, 214 App. Div. 375, 212 N.Y. Supp. 253 (1925).

[40] Princeton Township v. Institute for Advanced Study, 59 N.J. Super. 46, 15 A.2d 136 (1960).

The point of law regarding the tax-exempt status of faculty housing owned by non-public institutions is not well-settled; however, the New York court[41] held that there was no distinction between living quarters provided for the students and living quarters provided for the faculty. Both were held entitled to tax exemption on the basis that such property was used exclusively for carrying out the purposes of the educational institution. Another case[42] was litigated in which the New York supreme court held faculty residences on the campus of Pratt Institute tax-exempt. The court reiterated the reasoning of the court expressed in the previous case cited. In 1960, a North Carolina court[43] held the housing of instructors, employees, and the registrar of the Southeastern Baptist Theological Seminary exempt from taxation. The reasoning of the court indicated that the housing was "wholly devoted to educational purposes" within the meaning of the state statute providing for such exemption. Precedents for the holding of faculty housing tax-exempt were established prior to the 1900s. All buildings occupied by faculty on the Lafayette College campus were held tax-exempt by a Pennsylvania court in 1889;[44] and, in 1892, a Minnesota court[45] declared faculty housing exempt from taxation since such buildings were primarily used for the benefit of the college. In these cases, the benefit of such housing to the faculty was considered only incidental to that gained by the college.

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[41] Application of Thomas G. Clarkson Memorial College of Technology, 191 Misc. 621, 77 N.Y.S.2d 182 (Sup. Ct. 1948), aff'd, 274 App. Div. 732, 87 N.Y.S.2d 491, aff'd, 300 N.Y. 595, 89 N.E.2d 882 (1949).

[42] Pratt Institute v. Boyland, 16 Misc. 2d 58, 174 N.Y.S.2d 112 (Sup. Ct. 1958), aff'd, 8 App. Div. 2d 625, 185 N.Y.S.2d 753 (1959).

[43] Southeastern Baptist Technological Seminary v. Wake County, 251 N.C. 775, 112 S.E.2d 528 (1960).

[44] Northampton County v. Lafayette College, 128 Pa. 132, 18 Atl. 516 (1889).

[45] Ramsey County v. Macalester College, 51 Minn. 437, 53 N.W.704 (1892).

Faculty housing was held not exempt by a lower court in a 1961 Nebraska case[46] and was later affirmed by the state supreme court. The facts revealed that the housing on the campus was rented to faculty members, but no requirement existed which stipulated the members must live in said housing. The court held that such housing was not exempt from taxation because the use of the buildings for educational purposes was only an incidental and not a primary function. In a Pennsylvania case,[47] the location of the housing was a factor in the decision of the court. The court declared that the buildings occupied by faculty outside the campus grounds were not tax-exempt but held faculty housing on campus tax-exempt.

Tax status of educational buildings and grounds. Athletic fields and stadiums are held tax-exempt when used strictly for educational purposes. Two cases which reached the state supreme court of New Jersey illustrate this point of law. In the case of the Trustees of Rutgers University v. Piscataway,[48] the question arose as to the tax-exempt status of a massive fieldhouse and a new football stadium which held

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[46] Doane College v. County of Saline, 173 Neb. 8, 112 N.W.2d 248 (1961).

[47] Northampton County v. County of Saline, 128 Pa. 132, 18 Atl. 516 (1889).

[48] 134 N.J.L. 85, 46 A.2d 56 (1946).

20,000 spectators when the student enrollment of the university was only 17,000. The state statutes provided tax-exempt status for such land and buildings deemed necessary to carry out the objectives of the institution. The state supreme court held that physical education was a proper field for instruction; however, the massive field house and football stadium were declared to be more geared to spectator revenue than to the educational program. The court held both facilities subject to taxation. However, during the same year the state supreme court ruled the athletic field and gymnasium tax-exempt at Stevens Institute of Technology. The court held[49] that the facilities were used for conducting instructional courses and that the facts were much different from the Rutgers' case.

Restrictions placed upon lands conveyed to a non-public institution of higher learning by a donor which are in violation of the provisions of the institutional charter will be declared void by the courts. A case in point was the Trustees of Eureka College v. Bondurant.[50] A conveyance of property was made to the Trustees of the college which prohibited the property from being sold and stipulated that the receipts from the land were to remain as a perpetual fund for the use of the college. The college later desired to sell the land since the provisions of the institution's articles of incorporation prevented the college from holding any real estate for a period longer than ten years. The court held the condition of the deed void and granted the college the right to sell the land by grant of a fee simple title.

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[49] City of Hoboken v. Division of Tax Appeals, 134 N.J.L. 594, 49 A.2d 587 (1946).

[50] 289 Ill. 289, 124 N.E. 652 (1919).

The right of a non-public institution of higher learning to purchase lands condemned by the city for purposes of institutional expansion will be upheld by the courts. A case in point was Kintzele v. City of St. Louis.[51] In conjunction with a redevelopment plan, the city of St. Louis purchased land through the use of the power of eminent domain and sold the land to St. Louis University, a Roman Catholic institution, for one-third the amount paid by the city in condemnation proceedings. Suit was brought against the city in which the plaintiff claimed public power and public funds had been used in aid of a private, sectarian school. The court held that the fact the university paid only one-third of the condemnation price was not controlling since the university actually paid for the "re-use" value of the property. The court maintained that the redevelopment of an area was a "public purpose" and there was no requirement to put the land to a "public use." A similar case arose in the state of New York.[52] The city of New York purchased certain substandard and unsanitary property through condemnation proceedings and, in turn, sold the land to Fordham University. The university agreed to raze the buildings, relocate the tenants, and restrict the use of the land to the expansion of its campus and buildings. The opinion of the court reiterated the holding of the Missouri court by stating that the city benefited by the accomplishment of its municipal purpose which was the elimination of a slum. Since the court held that the sale of the property was an "exchange of considerations" and not a gift, no aid to religion was held involved.

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[51] 347 S.W.2d 695 (Mo. 1961).

[52] 64th St. Residences v. City of New York, 4 N.Y.2d 268, 174 N.Y.S.2d 1, 150 N.E.2d 396, cert. denied, 357 U.S. 907 (1958).

Tax status of commercial enterprises of educational institutions. The right of a non-public college or university to a tax-exempt status of its commercial properties is unsettled in the courts. A 1957 holding of an Iowa court[53] indicated this point in stating that "while some jurisdictions hold that exemption statutes should be liberally construed the majority . . . adopt the view that they must be strictly construed with all doubts resolved against an exemption." A Kentucky court provided a liberal opinion in answering the question of whether a municipality could collect taxes upon the income-producing real estate of charitable and educational institutions. The court held[54] that office buildings, restaurants, and other commercial enterprises of a non-public institution were exempt from taxation in accordance with the state constitution provided all income was devoted solely to educational purposes. Another case which upheld the tax-exempt status of a commercial enterprise was reported in the state of New York. Pace College entered into an agreement with a chain restaurant corporation for operating the campus cafeteria. A portion of the tax-exempt status of the building was withdrawn by tax officials since the college allowed the operation of a commercial corporation to operate within the building. The court held[55] that the cafeteria was exempt from taxation since the college was actually operating the cafeteria for the furtherance of the educational purposes of the institution within the meaning of the tax law.

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[53] Cornell College v. Board of Review, 248 Iowa 388, 81 N.W.2d 25 (1957).

[54] City of Louisville v. Presbyterian Orphan Home Soc'y, 299 Ky. 566, 186 S.W.2d 194 (1945).

Commercial enterprises were not construed as liberally in a 1960 Arkansas case.[56] Harding College conducted a laundry, a dairy, and a print shop on the campus. Students were employed to operate these enterprises. The court held that all three enterprises were subject to taxation since the college did not operate the enterprises exclusively for the educational purposes of the institution. The property of non-public institutions will be held subject to taxation under certain conditions. Land which Cornell College[57] held full legal title to was held taxable when the college paid an annual annuity for life to the donor. Due to the annuity payments, the college was held not to be the owner of the land within the meaning of the statute. Another case in point was that of Bennett Medical College.[58] The college held real estate under a ninety-nine year lease, and the property was used in connection with the college. The charter of the college provided that all lands "belonging" to the college were tax-exempt. The court maintained that the leased property did not belong to the college and was, therefore, subject to taxation.

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[55] Pace College v. Boyland, 4 N.Y.2d 528, 176 N.Y.S.2d 356, 151 N.E.2d 900 (1958).

[56] Hilger v. Harding College, Inc., 231 Ark. 686, 331 S.W.2d 851 (1960).

[57] Cornell College v. Board of Review, 248 Iowa 388, 81 N.W.2d 25 (1957).

[58] People v. Bennett Medical College, 248 Ill., 608, 94 N.E.110 (1911).

Tax status of fraternities. The courts will hold a fraternity house subject to taxation since a fraternal corporation does not meet the requirement of being either an educational or a scientific corporation. A case frequently cited in regard to the tax status of fraternity houses was Orono v. Sigma Alpha Epsilon Society.[59] The fraternity built a house on the property of the University of Maine and petitioned the court for a declaration of a tax-exempt status. The court denied the petition and held that the fraternity was not entitled to exemption because it did not qualify as an educational or scientific institution. The court maintained that the tax was assessed against the fraternity as an independent corporation and did not constitute an assessment against the University of Maine, a non-public institution. The courts of Massachusetts[60] and New York[61] expressed similar reasoning to the Orono case in holding fraternity houses subject to taxation. In a recent case[62] in the state of Ohio, the officials of Denison University applied for exemption of the buildings located on the campus and leased to fraternities. The university did, however, regulate the conduct within the fraternity houses. The court denied the request for exempt status of the houses on the basis that such buildings were not used exclusively for charitable purposes since only dues-paying members were permitted to live therein.

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[59] 105 Me. 214, 74 Atl. 19 (1909).

[60] Phi Beta Epsilon Corp. v. City of Boston, 182 Mass. 457, 65 N.E. 824 (1903).

[61] People v. Lawler, 74 App. Div. 553, 77 N.Y. Supp. 840 (1902), aff'd, 179 N.Y. 535, 71 N.E. 1136 (1904).

[62] Denison Univ. v. Board of Tax Appeals, 173 Ohio St. 429, 183 N.E.2d 773 (1962).

Tax status of college parking lots. An institution-owned parking lot used for purposes of faculty and student parking will be held tax-exempt by the courts if the parking charge is reasonable. This point was illustrated in two cases which involved George Washington University. A 1955 court decision[63] declared that parking lots owned by the university for the free use of the faculty or employees were used for carrying out the purposes of the institution. The 1958 decision held[64] that a charge of twenty cents per half day for students to park in university-owned parking lots did not void the tax-exempt status of such lots. In a California case, the court declared[65] a parking lot came within the provisions of tax exemption since any facilities which were reasonably necessary to fulfill the function of a modern college were included under the statutory provision.

Status of state appropriations to non-public colleges and universities. The constitutions of twenty-six states[66] contained expressed provisions prohibiting the appropriation of public funds in aid of any non-public college or university, particularly sectarian institutions of higher learning. The purpose of prohibiting appropriations to sectarian institutions is to maintain the separation of church and state in accordance with the provisions of the First Amendment to the United States Constitution which forbids Congress from making any law respecting an establishment of religion. This prohibition on the federal government has been extended to the states in the "due process" clause of the Fourteenth Amendment to the United States Constitution.[67] The states, therefore, have both state and federal constitutional provisions which prohibit appropriation of funds in aid of sectarian institutions of higher learning. A case[68] which well illustrated the point was reported in the state of Pennsylvania. The Pennsylvania legislature passed an act in 1921 which appropriated funds to certain charitable, educational, and benevolent institutions. The constitutionality of appropriating public funds to such institutions was challenged in the courts since the state constitution expressly forbid such appropriations. The fact that appropriations had been made to sectarian institutions over a long period of time did not make them legal according to the opinion of the court. Such appropriations were held a violation of the state constitution by the court. The Pennsylvania court defined a sectarian institution of higher learning as one which maintained elective denominational courses and optional religious services.

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[63] District of Columbia v. George Washington Univ., 221 F.2d 87 (D.C. Cir. 1955).

[64] Ibid., (D.C. Cir. 1958).

[65] Church Divinity School v. County of Alameda, 152 Cal. App. 2d 496, 314 P.2d 209 (1957).

[66] See Table I, pp. 60 ff.

In cases where public funds are granted to non-public colleges or universities, the question which arises is whether the municipal or state government receives some return or exchange of value for such appropriations. A case in point was Southwestern Presbyterian University v. Clarksville.[69] The city of Clarksville had provided the university with $50,000 in bonds to induce the university to locate in that city; however, a condition of such funds was that there were to be ten students in attendance at the university at all times as designated by the city. The funds granted by the city with the provision for a designated number of students to attend the university were considered an "exchange of value" and not a gift of funds.

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[67] Thomas Edward Blackwell, College Law: A Guide for Administrators (Washington, D.C.: American Council on Education, 1961), p. 32.

[68] Collins v. Kephart, 271 Pa. 428, 117 Atl. 440 (1921).

The status of state funds appropriated for tuition aid for residents of the state to attend non-public institutions of higher learning is not a well-settled principle followed by the courts. A case which held tuition aid to non-public institutions unconstitutional was litigated in the Virginia court under Almond v. Day.[70] The state passed an act providing for the appropriation of tuition funds for the education of orphans of war veterans in order to attend either a public or a non-public institution. The court declared the act unconstitutional declaring it violated the state provision which prohibited the passage of any laws aiding religion.

An early case[71] in the state of Kansas held that a railroad company could not be required to pay taxes which directly benefited a sectarian institution. The court found that the officers of the city had no power to tax property within the city for the purpose of providing public aid to private, sectarian institutions. All tax levies passed by the city for that purpose were declared void.

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[69] 149 Tenn. 256, 259 S.W. 550 (1924).

[70] Almond v. Day, 197 Va. 419, 89 S.E.2d 851 (1955).

[71] Atchison, T. & S.F.R. Co. v. City of Atchison, 47 Kan. 712, 28 Pac. 1000 (1892).

Aid to non-public colleges and universities, however, has been upheld in some cases. In the state of Massachusetts, the legislature requested an opinion from the justices of the state supreme court on the question of the constitutionality of appropriating public funds for the support of sectarian institutions of college or university rank. The opinion of the justices of the supreme court stated[72] that the constitutional amendment which prohibited public monies raised for public schools from being appropriated to any denominational school did not prevent the state support of sectarian institutions of higher learning. Another case[73] in which state aid was upheld was contained in the court records of the state of Maryland. Johns Hopkins University received a gift of cash from the state for the purpose of erecting an engineering building. The court upheld the gift to the university since the constitution did not prohibit a gift of cash. Another case in the state of Maryland which upheld the constitutionality of state appropriations to non-public institutions of higher learning was the Horace Mann League of the United States v. Tawes, Governor.[74] Four non-public colleges in the state were appropriated funds for the construction of new buildings. The lower court rules in favor of the state, and the case was accepted by the United States Supreme Court on appeal. The opinion of the Supreme Court on the constitutionality of such appropriations was pending at the time of this research study.

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[72] In re Opinion of the Justices, 214 Mass. 599, 102 N.E. 464 (1913).

[73] John Hopkins Univ. v. Williams, 199 Md. 382, 86 A.2d 892 (1952).

[74] Governor, Case No. 15, 850 Eq., Cir. Ct. for Anne Arundel County, Md., March 11, 1965.

Status of federal appropriations to non-public colleges and universities. Appropriations of federal aid to colleges and universities have increased at a rapid rate since World War II. Non-public colleges and universities have been recipients of sizeable sums of aid in various forms under recent federal aid bills. The National Science Foundation Act[75] provided for the awarding of scholarships and graduate fellowships in the various science fields. The scholarships were awarded solely on the basis of ability and could be used to attend any non-profit institution of higher learning. The National Defense Education Act of 1958[76] provided for student loans in which the non-public institutions of higher learning were eligible to participate. The Higher Education Facilities Act of 1963[77] and the Higher Education Act of 1965[78] provided aid to non-public colleges and universities. Loan funds for facilities which were to be used specifically for sectarian instruction or as a place of religious worship were prohibited.

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[75] National Science Foundation Act, 64 Stat. 149 (1950), 42 U.S.C. §§ 1862 (4), 1869 (1958).

[76] National Defense Education Act of 1958, 72 Stat, 1583, 20 U.S.C. §§ 421 - 26 (1958), as amended, 20 U.S.C. §§ 421 - 22, 425 - 26 (Supp. III, 1961).

[77] Higher Education Facilities Act, 77 Stat. 363 (1963), 20 U.S.C.A. §§ 701 - 57 (Supp. 1964).

[78] Higher Education Act of 1965, 79 Stat. 1219 (1965).

Such appropriations, however, were appropriate to any other facilities on a sectarian campus of a non-public institution of higher learning. The holding of the United States Supreme Court in the case of Frothingham v. Mellon[79] in 1923 was significant to the determination of any federal appropriation of funds to non-public institutions of higher learning. The Supreme Court held that a suit by an individual, as a past and future taxpayer, to restrain the enforcement of an Act of Congress which authorized appropriations of public money, on the ground that the Act is invalid, cannot be entertained. The Court further declared that to invoke the judicial power to disregard a statute as unconstitutional, the party who assails it must show not only that the statute is invalid, but that he has sustained, or is immediately in danger of sustaining, some direct injury as a result of its enforcement, and not merely that he suffers in some indefinite way in common with people in general. The first case which met the criteria established in the Frothingham decision was the Horace Mann League v. Tawes, Governor case,[80] which was pending before the Supreme Court at the time of this study.

Incorporated non-public institutions of higher learning are exempt from the provisions of the Federal Income Tax Act if operated exclusively for educational purposes and no part of the net income inures to the benefit of any private stockholder or individual. The United States Supreme Court held[81] that a corporation organized for an educational purpose and holding all its property for such purpose was exempt from the federal income tax.

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[79] 262 U.S. 447 (1923).

[80] Governor, Case No. 15, 850 Eq., Cir. Ct. for Anne Arundel County, Md., March 11, 1965.

[81] Trinidad v. Sagrada Orden, 263 U.S. 578 (1924).

President and Faculty

The number of court cases involving the president or faculty of non-public colleges and universities is limited. The cases reported in this section pertain to contracts, dismissals, tenure, and loyalty oaths of faculty members. In addition, the right of the president of an institution to bind the college or university without Trustee approval is reported.

Contracts, dismissal, and tenure. The majority of the cases under this heading were litigated for the purpose of clarification of the status of the faculty member under the provisions of the tenure policy of a college or university. The relationship between the institution and the faculty member is a contractual one. The old and comparatively simple principles of the law of contracts was applicable as to the inception, duration, termination, or breach of a contract.[82]

The power to grant tenure to a faculty member of a non-public college or university will not be interfered with by the courts unless a violation of adopted policy exists. A case in point was Rhine v. International Y.M.C.A. College.[83] The college had a policy which held that a professor could assume tenure was granted after teaching in the college for a period of three years. A professor was employed for three contract years; however, the third contract had been granted and accepted on the condition that it was to be a terminal contract. At the completion of the third year of teaching, said professor sought tenure and was denied. In the ensuing court action for breach of contract, the court held that the terms of the third year contract were fully within the power of the college and the professor had accepted them fully aware of such action. The employment was terminal, stated the court, and no rights of tenure existed. An additional case in point was reported in the state of New York in 1964. The court upheld[84] the right of the president and faculty of New York University not to renew the contract of a lecturer who was not on tenure. The court dismissed the complaint of the lecturer. The court declared that the college officials were within their rights in not renewing the contract since no tenure existed and a hearing with respect to such determination was not a right available to the lecturer.

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[82] Chambers, op. cit., p. 77.

[83] 339 Mass. 610, 162 N.E.2d 56 (1959).

Oral contracts provide a questionable basis for claims by faculty members when litigated in the courts. In Keleher v. La Salle College,[85] an assistant professor was not appointed to a second year contract. In a court action the assistant professor alleged that the president had consummated an oral contract which provided for tenure at the time of the signing of the written contract. The Pennsylvania court held that the written contract superseded all oral agreements, and the written agreement could not be added to or subtracted from by means of parol evidence. The state supreme court affirmed the holding of the lower court, and the United States Supreme Court refused to review the case.

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[84] Barone v. Adams, 20 App. Div. 2d 790, 248 N.Y.S.2d 72 (1964), affirming 39 Misc. 2d 227, 240 N.Y.S.2d 390 (Sup. Ct. 1963).

[85] 394 Pa. 545, 147 A.2d 835, cert. denied, 361 U.S. 12 (1959).

Faculty members on tenure are subject to dismissal only for adequate cause. This point was best illustrated in a case[86] in the state of North Carolina. A tenure policy had been adopted by the Trustees of the college as a part of its by-laws which provided for discharge only for adequate cause. A professor on tenure was given a hearing on charges of making slanderous statements which reflected upon the institution to the students, faculty, and others. The professor was dismissed following the hearing and was granted a salary for one year following the dismissal from the faculty in accordance with provisions of the tenure policy. During the ensuing year, the discharged faculty member accepted and cashed all of the checks received from the college. Later, the discharged professor initiated court action charging wrongful dismissal. The court held that the tenure policy which provided a salary for one year following dismissal applied only when adequate cause for such dismissal existed; otherwise, the dismissed faculty member had lawful action for wrongful discharge. Since the professor had accepted the checks, the alternative to pursue a legal recourse in the courts for wrongful discharge no longer existed.

The recommendation of the American Association of University Professors in regard to tenure does not apply to a non-public college or university unless such is adopted by the Trustees of the institution. A professor at Kentucky Wesleyan College claimed wrongful discharge after having taught at the college for a period of four years. The professor claimed that membership in the American Association of University Professors entitled a professor to tenure after three years. Considering the fact that the policy of the A.A.U.P. had not been adopted by the Board of Trustees and no promise of tenure had been made, the court held[87] in favor of the college.

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[86] Thomas v. Catawba College, 248 N.C. 609, 104 S.E.2d 175 (1958).

The right of a non-public college or university to dismiss a faculty member for just cause when the member refuses to testify at a Congressional hearing will be upheld by the courts. A case in the state of New York illustrated this point. A professor at Washington Square College was convicted by the Federal government for failure to testify and produce records of a "Joint Anti-Fascist Committee" before a Congressional hearing. The faculty member was dismissed by the college. The professor sued for salary from the date of suspension to the date of the actual dismissal. The professor was required to prove to the court that a valid contract existed up to the date of dismissal which the professor failed to do. The court held[88] in favor of the university. Another case[89] in point involved the dismissal of a tenured professor at the University of Kansas City. Davis, a professor at the university, sought to enjoin the university from denying certain rights attained by said professor under the tenure policy. The facts of the case indicated that Professor Davis refused to answer the question whether he had ever been a member of the Communist party before a Congressional subcommittee hearing. The university later held a hearing in which the same question was raised and the professor refused to answer. The professor was then discharged. An ensuing court action resulted in the court's declaration that refusal to answer the question in regard to membership in the Communist party was just cause for dismissal. The court held that the professor had the right under the Fifth Amendment to the United States Constitution to refuse to answer the question without inference of criminality being drawn; however, the professor did not have a Constitutional right to remain a teacher.

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[87] Scott v. Joint Board of Education, 258 S.W.2d 449 (Ky. 1953).

[88] Bradley v. New York Univ., 124 N.Y.S.2d 238 (Sup. Ct. 1953), aff'd, 307 N.Y. 620, 120 N.E.2d 828 (1954).

[89] Davis v. University of Kansas City, 129 F. Supp. 716 (W.D. Mo. 1955).

Loyalty oaths. Loyalty oaths constitute a body of unsettled law. The trend, however, is toward rescinding the statutory requirements for such oaths. The Colorado Revised Statutes, 1963, provide an example of the oath required by the state for both public and non-public college and university teachers before assuming teaching duties in the state. Section 123-17-4 of the Colorado Revised Statutes, 1963, stated:

> Every teacher employed to teach in any private or parochial school or in any academy, college, or university . . . in the state of Colorado, before entering upon, or continuing, the discharge of his or her duties, shall be required to take the same oath or affirmation of allegiance as that prescribed for public school teachers...[90]

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[90] Colo. Rev. Stat. § 123-17-14 (1963).

A suit by the University of Colorado asking for an opinion on Colorado's loyalty oath law was dismissed in the district court on July 28, 1966.[91] The motion for dismissal maintained that the suit was speculative, that an advisory opinion was requested where no controversy existed, and that it failed to state a claim upon which relief could be granted.

Between 1950 and 1962, the states of Arkansas,[92] California,[93] Oklahoma,[94] and Washington[95] were involved in litigation in regard to state loyalty oath statutes; however, all state oaths were limited to state aid institutions and were not applicable to faculty of non-public institutions. The latest United States Supreme Court decision in regard to state required loyalty oaths declared the Arizona statute a violation of the First Amendment to the United States Constitution.[96]

Powers of officers to bind college. Officers of a college are not authorized to bind the college for purchases of real or personal property unless duly authorized by the Board of Trustees through its by-laws. In St. Vincent College v. Hallett[97] the president and treasurer signed a note in return for a loan. The by-laws provided that no deed, mortgage, or note to secure a loan could be made unless authorized by resolution at a meeting of the Trustees. The court held that the by-laws had not empowered the president to bind the college by the execution of notes not authorized by the Board of Trustees. The court further noted that the purchaser of the note was responsible to determine the signee's authority to bind such college. A case[98] in the state of Louisiana was similar to the St. Vincent College case. The head bookkeeper of Centenary College of Louisiana signed a contract to purchase a score board, and notes were executed to the seller. The college refused to pay the notes. The court maintained that the power of an agent of the college to buy and sell was limited to the expressed consent of the Board of Trustees. The execution of notes was held to be more than an administrative function and was restricted to corporate action expressed in the charter or by the Trustees in the by-laws. Persons dealing with agents of a college were responsible for the determination of the extent of the powers of such agents. Companies transacting business through college agents and failing to determine the authority of such agents were granted no recourse through the courts.

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[91] The Denver Post, July 29, 1966, p. 33.

[92] Shelton v. Tucker, 364 U.S. 479 (1960), reversing Shelton v. McKinley, 174 F. Supp. 351 (D. Ark. 1959), and Carr v. Young, 231 Ark. 641, 331 S.W.2d 701 (1960).

[93] Packman v. Leonard et al., 39 Cal. 2d 676, 249 P.2d 267 (1952).

[94] Board of Regents of Oklahoma Agricultural Colleges v. Updegraff, 205 Okla. 301, 237 P.2d 131 (1951), rev'd sub nom. Wieman v. Updegraff, 344 U.S. 183 (1952).

[95] Nostrand v. Little, 58 Wash. 2d 111, 361 P.2d 551 (1961), appeal dismissed, 368 U.S. 436 (1962).

[96] Elfbrandt v. Russell, 86 S.Ct. 1238 (1966).

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[97] 201 Fed. 471 (7th Cir. 1912).

[98] Credit Alliance Corp. v. Centenary College of Louisiana, 17 La. App. 368, 136 So. 130 (1930).

Students and Programs

The court cases reported in this section are related to admission and dismissal of students, institutional rules and regulations pertaining to students, and the right of the non-public institution to withold the conferment of degrees.

Student admission. The relation of a private college or university to its students is a contractual relationship. The non-public institution of higher learning is entitled to admit or refuse to admit any person on the basis of age, sex, lack of educational proficiency, or any other reason so determined by the institution. A case in point was the denial of admission of Negroes to Tulane University of Louisiana who were qualified for admission but were rejected solely on the basis of race. A federal court held[99] that the provisions of the Fourteenth Amendment did not apply to non-public institutions unless sufficient evidence of "state action" was involved. Since Tulane University was a private institution and not under state control, constitutional sanctions of the Fourteenth Amendment could not be applied. Therefore, the court upheld the refusal of the university to admit the Negro persons. In an early Michigan case, the court held[100] that a non-public college was not required to permit a Negro student to return to the institution for a second year of study if the college officials so decided. The holding of the court further maintained that the refusal of the college to readmit the Negro student did not deny such student any constitutional immunity or privilege. A more recent Illinois case[101] which reached the United States Supreme Court further established the right of the non-public institution to admit whomever it chose. The refusal of Northwestern University to accept a fourteen year old boy, for reasons considered adequate by the university officials, was not a violation of the parent's right to educate the child. The right of Northwestern University to exercise its power to deny admission to any person was a charter right, and neither the courts nor the legislature was authorized to interfere with such judgment of university officials.

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[99] Guillory v. Administrators of Tulane Univ., 212 F. Supp. 674 (E.D. La), aff'd, 306 F.2d 489 (5th Cir. 1962).

[100] Booker v. Grand Rapids Medical College, 156 Mich. 95, 120 N.W. 589 (1909).

Rules and regulations. The right to adopt reasonable rules for the government and management of a college or university, and the right to enforce such rules reasonably and not arbitrarily, is a point of law upheld by the courts. In *Koblitz* v. *Western Reserve University*,[102] the court held that when a university was adjudged a private corporation the state would not interfere in the management of the institution as long as it was conducted in a reasonable manner. The reasoning of the court in a Kentucky case[103] maintained that college authorities stood *in loco parentis* as to the mental training and the physical and moral welfare of students. The concept of *in loco parentis* permitted the college officials to make any rules and regulations, without interference by the courts, for the government of the students. The college was empowered, under this concept, to establish rules and regulations commensurate with those a parent could make for the same purpose. In this same case, the college passed a regulation which prohibited all students from eating in any place except one controlled by the college. Gott, a restaurant owner, requested an injunction against the college in order to have the rule rescinded; however, the court held in favor of the college. Another point of law in the Gott case is that college or university officials may make rules and regulations to control student behavior off the campus if such behavior is deemed detrimental to the institution. In Anthony v. Syracuse University[104] a rule reserving the right of the university to dismiss a student at any time without stating a reason was held valid by the court. The fact that the student had signed a statement agreeing to adhere to the rules and regulations of the university and that such provision was also contained in the university catalog was considered a part of the contractual relationship between the student and the university. The student was dismissed without showing cause for such dismissal, and the student sued the university; however, the court ruled in favor of the university. A Maryland court held[105] that the maintenance of discipline was the responsibility of the faculty and officers of the university and the court's interference was unwarranted unless the officers and faculty abused the use of such discretion or acted arbitrarily.

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[101] *People* v. *Northwestern Univ*., 333 Ill. App. 224, 77 N.E.2d 345, *cert. denied*, 335 U.S. 829 (1948).

[102] 21 Ohio C.C.R. 144, 11 Ohio Dec. 515 (1901).

[103] *Gott* v. *Berea College*, 156 Ky. 376, 161 S.W. 204 (1913).

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[104] 224 App. Div. 487, 231 N.Y. Supp. 435 (1928).

[105] Woods v. Simpson, 146 Md. 547, 126 Atl. 882 (1924).

Every student upon his admission to a college or university implicitly promises to submit to and be governed by all the necessary and proper rules and regulations which have been, or may be, adopted by the officials of the institution. In an Oklahoma case, an action was brought against the state university by an owner of a boarding house to restrain the enforcement of a rule which required undergraduate students to live in housing facilities furnished by the university; however, students were permitted to live in fraternity houses and a hall owned by a religious group. The court, upon examination of the circumstances under which such rule was promulgated, held[106] that the rule was reasonable and not one arbitrarily and capriciously exercised to deny the boarding house operator the right of equal protection of the laws.

Student dismissal and expulsion. It is a well settled law that the act of matriculation and the payment of the required tuition fees create a contract between the student and the university. Two implied conditions result from such contract: namely, (1) no student shall be arbitrarily expelled from the institution, and (2) the student will submit himself to reasonable rules and regulations for the breach of which the student may be expelled. In the case of John B. Stetson University v. Hunt,[107] the university was sued in action of tort for maliciously, wantonly, and without cause expelling Hunt as a student from the institution. The court, on appeal, held that the college authorities stood in loco parentis and could make rules with which the courts would not interfere if not in violation of divine or human law. The court further stated that the mere mistake of judgment on the part of an officer of the college in suspending or expelling a student did not render the officer liable in the absence of wanton, willful, or malicious action. A private institution of learning, according to the court, was not required to prescribe charges nor prove such charges at a trial before dismissing a student either permanently or temporarily. Another case in point was Barker v. Trustees of Bryn Mawr.[108] The court of common pleas was powerless to issue a writ of mandamus to compel a student's reinstatement to the college after the student was dismissed. A non-public college was not required to prove charges and hold a trial before dismissing a student regarded by the college as undesirable if the college regulations reserved the right to exclude students for such action and if no state aid was received by the institution.

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[106] Pyeatte v. Board of Regents, 102 F. Supp. 407 (W.D. Okla. 1951), aff'd without opinion, 342 U.S. 936 (1952).

[107] 88 Fla. 510, 102 So. 637 (1924).

The Maryland court[109] took an opposite view, however, on a dismissal case. A student in the law school, having completed the academic requirements, was notified that the faculty would not consider the student for graduation. The reasons given were that the student had failed to attend a sufficient number of lectures and that the student was not known to the new faculty then conducting the law school. The court maintained that the student was wrongfully dismissed without proper notice.

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[108] 278 Pa. 121, 122 Atl. 220 (1923).

[109] Baltimore Univ. v. Colton, 98 Md. 623, 57 Atl. 14 (1904).

The radical views of a student are just cause for a student's dismissal. A New York case concerned a senior law student expelled by the law school officials for expressing views which were unpatriotic, revolutionary, and anarchistic. The student sought to be reinstated through court action; however, the court denied[110] the petition of the student. The court held that the action to expel the student was not arbitrary, and it further held that the faculty had operated within the scope of its jurisdiction.

Conferring of degrees. The courts will uphold the right of a non-public institution of higher learning to determine and enforce requirements necessary for the granting of degrees. In a Wisconsin case,[111] a medical student sought a court order to compel the university to confer a degree upon him. All the course requirements had been completed, but the student was dismissed for justifiable reasons by university officials prior to the granting of the degree. The student claimed discrimination on the part of the college since other students supposedly had committed similar rule infractions and yet had received degrees. The court ruled against the claims of the student on the basis that the college officials had the right to determine whether a degree would be conferred, and the court would not interfere with such decision unless it was held to be arbitrary. Another Wisconsin case[112] resulted in the court's determination that a senior dental student could be denied a degree since the student failed to complete admission requirements of the college. The fact that the student had been allowed to complete the full course requirements of the program was immaterial to the holding of the court. In Edde v. Columbia University of New York City,[113] a graduate student sought to be reinstated as a certified candidate for the degree of Doctor of Philosophy and to be examined for that degree on the basis of the completed dissertation. The court held that the acceptance or rejection of the doctoral thesis was the prerogative of the college and not that of the court. The motion of the student was denied. A student in Tate v. North Pacific College[114] similarly attempted to force the college to confer a degree upon said student. The claim was that after the faculty had first informed the student that satisfactory passing marks had been attained on examination papers, then said faculty purposely mislaid or destroyed the examination papers. The student was required to take another examination and claimed to have been given such a low grade as to prevent the receipt of the degree of Doctor of Dental Medicine. The court held that it was incumbent upon the student to prove that the faculty had acted in bad faith and misconduct. The evidence was held insufficient to prove such charges. Another case in point involved a graduate student who brought action against a non-public university in the state of Massachusetts to enjoin it from withholding a scholarship award and refusing to permit the student to register anew. A letter from the student protesting the inadequacy of the award and accusing bad faith on the part of university officials was used by the university as evidence for a motion to dismiss the complaint. The court held[115] that where private universities reserved the right to sever connection with any student and published such regulation in the institution's general catalog, the university authorities held the right to determine the appropriateness of the reasons for such action.

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[110] People v. Albany Law School, 198 App. Div. 460, 191 N.Y. Supp. 349 (1921).

[111] Frank v. Marquette Univ., 209 Wis. 372, 245 N.W. 125 (1925).

[112] State v. Milwaukee Medical College, 128 Wis. 7, 106 N.W. 116 (1906).

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[113] 8 Misc. 2d 795, 168 N.Y.S.2d 643 (Sup. Ct. 1957), aff'd, 6 App. Div. 2d 780, 175 N.Y.S.2d 556 (1958), appeal dismissed, 5 N.Y.2d 881, 182 N.Y.S.2d 829 (1959).

[114] 70 Ore. 160, 140 Pac, 743 (1914).

A non-public college or university has the right to refuse to allow students with fanatical views to complete a teacher preparation program. In Robinson v. University of Miami,[116] the court held that a university was entitled to withdraw a student from the teacher preparation course when the faculty determined the student to be fanatical in his views as to atheism. The court maintained that the university was under a duty and obligation not to graduate a teacher with such fanatical ideas. The exposure of impressionable young minds in the classroom to such ideas was calculated to operate to the deteriment and injury of the children.

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[115] Dehaan v. Brandeis Univ., 150 F. Supp. 626 (D. Mass. 1957).

[116] 100 So. 2d 442 (Fla. 1958).

CHAPTER VI

SUMMARY OF THE FINDINGS AND CONCLUSIONS FROM THE STUDY

The Problem and Procedure

The central purpose of the study was to determine the legal status of the non-public college and university in the United States. In order to accomplish this purpose, the following procedure was employed. Literature in the history of higher education was reviewed to trace the historical-legal development of non-public higher education in this country. Then, the constitution and the statutes of each of the fifty states were searched for all provisions pertaining to the non-public college and university. These provisions were compiled and analyzed to determine the extent to which each state made provision for the organization and operation of such institutions. Further, the charters of a stratified sample of non-public institutions of higher learning were collected and analyzed under four chronological periods corresponding to the date of founding of the institution. The purpose of this analysis was to determine whether the powers granted in the charters justified the assumption that the state exerted increased control over non-public colleges and universities from 1636 to 1965. In addition, the powers contained in the charters were classified under five activity areas established in the study for the purpose of defining the type of power granted non-public institutions by the states. Finally, as a means of ascertaining the principles of common law related to non-public institutions of higher learning, court cases related to the legal aspects of higher education were reviewed. These cases were then briefed to determine the point of law applicable to the legal status of the non-public college and university.

Purpose of Present Chapter

The purpose of this chapter is to summarize the findings and report the conclusions of the study. The findings and conclusions related to the legal status of the non-public college and university are reported categorically under each of five headings: (1) the historical-legal development of non-public higher education, (2) the legal status revealed in the state constitutions, (3) the legal status revealed in the state statutes, (4) the legal status revealed in the charters of non-public institutions, and (5) the legal status revealed in the decisions of the courts.

Historical-Legal Development of Non-Public Higher Education

The historical-legal landmarks contributing to a broader understanding of the legal status of the non-public college and university in the United States are reported herein.

Findings. As early as the twelfth century, European universities found it desirable to adopt a legal form of corporate existence. In order to incorporate as a legal body, the universities were required to secure a charter from either the church or the state. The most significant legal power granted by a charter to non-public colleges and universities was the historic right of self-government.

Later, the colleges founded in America during the colonial period followed the European tradition of organizing as corporate bodies under the provisions of a charter. Despite the fact that the last church was not disestablished from the state until 1833, the sole authority for granting charters in America was limited to the colonial assemblies. Following the Revolutionary War, however, several states attempted to assume control of non-public colleges which was in violation of institutional charter provisions. A test case to determine the legal right of a non-public institution of higher learning to exist and operate without interference by the state was initiated by Dartmouth College against the state of New Hampshire in 1819. The United States Supreme Court declared the corporate charter a contract between the state and its incorporators; since the United States Constitution forbids the states from passing laws impairing the obligation of contracts, any attempt by the state to interfere with the operation of a non-public college and university was declared unconstitutional.

Non-public colleges and universities were granted charters by special acts of the state legislatures until the latter part of the nineteenth century. By 1965, however, all except four of the fifty states provided for the issuance of charters by general laws in the form of corporation acts. A comparison of the powers granted in the charters of non-public institutions founded during the four chronological periods outlined in the study revealed that no important differences existed. The data did not support the hypothesis that the greatest amount of control would be found in the charters of non-public institutions founded between 1946-1965. The findings revealed that the charters of non-public institutions of higher learning founded during the earlier periods of history were kept current by the institution's acceptance of new incorporation acts and by amendments.

The concept of the separation of church and state was established in the United States with the adoption in 1791 of the First Amendment to the federal Constitution which forbid the passage of any law respecting the "establishment of religion." This concept had an important financial effect upon the status of the non-public college and university since all but four states passed legislation which prohibited the appropriation of financial aid to non-public institutions of higher learning. The federal government, however, continued to provide increased amounts of financial aid to non-public colleges and universities under the general welfare clause of the United States Constitution despite the provisions of the First Amendment. Consequently, the legality of such appropriations was still being challenged at the time of this study.

Conclusions. The legal status of the non-public college and university is well-established as a corporate entity subject only to the provisions contained in its charter. A contractual relationship legally exists between the state and the non-public institution which cannot be abrogated.

The early charters do not reflect changes in the degree of state control exerted over non-public institutions of higher learning from one period of history to another since the institutions tend to keep the charter current by established legal methods.

Non-public institutions of higher learning founded under the auspices of a sectarian denomination have become more secularized during the twentieth century. This shift of major emphasis from a strictly religious purpose to a broader educational purpose emphasizing Christian ideals may provide a justification for a reevaluation by the state of the status of the non-public college and university. Through this reevaluation the state may find it both feasible and practical to appropriate public funds to certain non-public institutions of higher learning.

The right of the non-public college and university to receive financial aid from the federal government is well-established on the basis of the "general welfare" and the "national security" provisions of the United States Constitution. The trend toward increased federal aid to higher education, including institutions of higher learning controlled by sectarian denominations, is expected to continue.

The Legal Status Revealed in the State Constitutions

An analysis of the state constitutions revealed that provisions related to non-public institutions could be categorized under two headings: namely, (1) general corporate provisions and (2) specific educational provisions. The general corporate provisions specify the powers and limitations of the state or its political subdivisions over all corporations, including education; the educational provisions outline the specific powers and limitations of institutions incorporated for educational purposes.

Findings. In states where specific constitutional provisions for corporate powers of non-public colleges and universities are not made under educational corporation provisions, the general corporate provisions were determined to be applicable for granting this power. The general corporate provisions constituted two-thirds of all provisions related to non-public colleges and universities contained in the constitutions of the fifty states.

Under these general corporate provisions in the constitutions, only five of the states prohibited the appropriation of public funds in aid of any corporation. Furthermore, nine states prohibited such appropriation of public funds by the county or municipality.

The general corporation provisions in one-fourth of the states prohibited the state and county or municipality from lending credit to any corporation. In addition, five state constitutions contained provisions which prohibited only the state or the political subdivision of the state from lending its credit to a corporation.

No provision was made by forty-five of the state constitutions in regard to donation of state lands to private corporations. The constitutions of Alabama, Louisiana, Mississippi, Nebraska, and South Carolina, however, specifically prohibited such donations.

The constitutions of nearly three-fourths of the states made stipulation that no corporate charter could be created, amended, extended, or repealed except by general laws. Approximately one-fourth of the constitutions prohibit the states from passing special laws granting exclusive or special rights, privileges, or immunities to any corporation.

The power to sue and be sued and the power of the legislature to alter, revise, or amend any charter deemed injurious to the citizens of the state were provisions usually provided for under the statutory power of the states; however, a small number of states reserved these rights in their constitutional provisions.

The constitutions of a predominance of states contained one or more articles pertaining to the educational aspects of non-public education. The states of Delaware, Maryland, Tennessee, Vermont and Washington, however, contained no educational provisions in the constitutions directly related to non-public institutions of higher learning.

In the educational provisions of the state constitutions, more than one-half of the fifty states prohibited the appropriation of state funds to denominational or other private educational institutions. Despite the fact that Pennsylvania also made this provision, monies were provided for scholarship grants or loans to students to attend non-public institutions of higher learning provided these institutions were not theological seminaries or schools of theology. The states of Alabama and Iowa did authorize appropriations to non-public colleges and universities if a resolution was passed by a two-thirds vote of the state legislature. Educational institutions controlled by a sectarian demonination were specifically excluded from any appropriation of public funds or donation of property by the state constitutions of Arizona, California, Colorado, and New Mexico.

Real and personal property of non-public educational institutions was exempt from taxation under the educational provisions in the constitutions. This provision for tax exemption was contained in approximately one-half of the constitutions of the fifty states. Inheritance taxes and endowment funds not invested in real estate were also tax exempt. It was noted, however, that revenues from buildings or lands leased by incorporated colleges and universities to private individuals or organizations were subject to taxation. The constitution of Ohio contained the only provision in which the property of all corporations was to be forever subject to taxation in the same manner as an individual would be taxed.

In most states, non-public educational institutions were granted corporate powers through the general corporate laws of the state subject to future amendment, alteration, or repeal of a charter by the legislature; however, fifteen states included such a provision under the heading of educational corporations.

Special provisions regarding bequests, donations, and endowments were contained in the educational provisions of the constitutions of only five states. Two of the five states specified that donations to non-public institutions must be applied only to the objects for which such donations were conveyed.

A total of ninety citings were contained in the constitutions of the fifty states pertaining to educational provisions of non-public colleges and universities. Only eleven of these provisions in the constitutions were unique to a single state.

Conclusions. A preponderance of states provide for the chartering of non-public colleges and universitites under the general laws of the state. Incorporation by this method serves to ensure consistency in the powers and privileges granted to such institutions.

The state has indicated a willingness to aid non-public institutions of higher learning through the provision of tax exemptions. The concept, however, of direct appropriation of public funds to non-public institutions is rejected by a majority of the fifty states.

The state constitution forms the legal framework upon which the statutory laws of the state are developed. The provisions of state constitutional law are controlling whenever a conflict arises between the state constitutional law and statutory law.

The Legal Status Revealed in the State Statutes

The status of non-public institutions as revealed in the state statutes is subject to change by legislative enactment, inasmuch as the legislature has the power to amend, repeal, or initiate new statuacts when it deems such acts necessary. Therefore, more frequent change in such matters is noted in the states' statutes than in the constitutions.

Findings. The state statutes revealed the existence of two methods of incorporating a non-public institution of higher learning. These institutions were incorporated by the states under either a nonprofit corporation act or an educational corporation act. It was noted that half the states provided for the incorporation of non-public institutions by non-profit corporation acts; the other half incorporated such institutions under educational corporation acts.

Three-fourths of the twenty-four states which incorporated non-public institutions of higher learning under a non-profit corporation act granted general powers to institutions. The powers granted were to (1) sue and be sued, complain and defend in its corporate name; (2) have a corporate seal and alter it at pleasure; (3) make contracts and incur liabilities; (4) borrow money at rates of interest determined by the Trustees; (5) issue notes, bonds, and other obligations; and (6) secure any of its obligations by mortgage on all or any portion of the institution's property, franchises, and income. The general powers mentioned above were supplemented by specific acts pertinent to the operation of non-public institutions of higher learning contained in the statutes under the title "Education."

The second method of incorporating non-public colleges or universities was through the provisions of an educational corporation act. The states which employed this method of incorporating developed minimum standards for the establishment of non-public institutions. No charter was granted until these standards were met. The primary powers granted a non-public institution under an educational corporation act were (1) the power to confer degrees; (2) the power to take and hold property by gift, devise, and bequest; (3) the power to appoint a president, professors, tutors, or other agents and officers; (4) the power to buy, sell, or mortgage its property; (5) the power to change its name and amend its charter; (6) the power to fix the term of Trustees and establish the number to serve on the Board; and (7) the power to prescribe the courses of study to be pursued.

Provisions contained under the title "Education" in the state codes were also found to be pertinent to the corporate status of non-public colleges and universities. Under these codes, the power to confer degrees was granted to incorporated educational institutions in approximately one-half of the states. Nine states required the approval of the State Board of Education before degrees could be conferred; four states made the provision through special act of the legislature.

The statutes of several of the states contained provisions similarly reported in the state constitutions. The provision for bequests, gifts and devises to be used only for the purposes granted and the provision that prohibited appropriation of public funds to non-public institutions were two such areas.

Corporate powers in some statutes gave Trustees the right to borrow money for construction of facilities, the right to consolidate with a similar educational corporation, and the right to enact rules and regulations for the government and discipline of students with the president and professors responsible for enforcement of these regulations.

The statutes of only ten per cent of the states made provision for a non-public institution to dissolve; these statutes provided that all past academic records of students of the defunct institution must be deposited with the State University or the State Superintendent of Public Instruction.

The statutory provision declaring real and personal property of non-public institutions tax exempt if no profit inured to the benefit of any private individual was contained in the statutes of thirty-two states. Only a few provisions were made in regard to tax exemption on income of non-public institutions, on the limited exemption of property holdings, or on the tax exemption of faculty-employees housing.

The academic provisions found in the statutes of the states were limited and not consistent. Only nine states made specific provision for teacher-training programs to be visited yearly or every three years by the State Superintendent of Public Instruction. Refusal of the non-public institution to allow such visitation was grounds for revocation of the institution's power to confer degrees.

The statutes of various states stipulated courses which were required to be taken by a student before a degree could be conferred. Courses in one or more subjects of American history, state history, United States and state Constitutions, and civics were required in several states. Special instruction on the effects of alcoholic beverages, tobacco, and narcotics was required at least once each year in only two states.

Further, in seven states individuals employed to teach in any college or university in the state were required to sign an oath of allegiance before assuming any teaching duties therein. Non-public institutions were required to ascertain the signing of such oath by every faculty member; failure to comply with the provision of the statute in several states subjected the institution to loss of its tax exempt status.

Scholarship and loan programs conducted by the state were increasing. Several states passed scholarship programs to become effective in 1966; and still other programs have been developed for the blind, for the Indians, and for children of veterans killed in the wars. Ten states provided loans and scholarships to students to attend either a non-public or public institution of higher learning.

Two statutory provisions were particularly noteworthy under the rights and responsibilities of students. Hazing was prohibited in the statutes of six states. The legal status of a minor student was treated by several states. A student receiving a loan with the stated intent to attend a college was held liable for his loan as if he were of legal age when so stipulated in the state statute.

The category of miscellaneous provisions contained several points of concern to the college administrator. The officers of a college were exempt in eight states from serving as jurors. The state exercised a strict control over the purchase and use of pure grain alcohol by non-public institutions. Some states provided certain fire regulations and building codes in the statutes pertaining to campus buildings, particularly dormitories.

Conclusions. The state exercises little "direct" supervision over non-public colleges and universities with the exception of the teacher preparation programs conducted in such institutions.

The state exercises a degree of control over non-public institutions of higher learning through limitations on property holdings, licensing practices of various professions, granting of power to confer degrees, and building and fire regulations.

The responsibility of the state in granting the power to confer degrees to a non-public college or university extends beyond the right of the non-public college to exercise such power. The state must ascertain that a minimum standard will be met by the institution as a means of protecting the general public from meaningless degrees which are applicable to community and employment status.

The Legal Status Revealed in the Charters of Non-Public Institutions

A stratified sample of forty-eight charters of non-public institutions of higher learning was taken according to the date of founding of the institutions contained in the study. The powers thus revealed were arranged according to the following typology: (1) perpetuation activities, (2) workflow activities, (3) internal control activities, (4) identification activities, and (5) external control activities.

Findings. In the analyses of the charters a total of seventeen powers were identified under the five headings. More than one-half of these powers related to the perpetuation of the college operation. Such powers included the acquisition of land; issuance of bonds; borrowing of money; making of contracts; and sale, lease, and mortgage of real and personal property. The powers granted under the heading of workflow activities in the charters were to (1) confer degrees, (2) appoint the president and faculty, and (3) to prescribe the course or courses of study. Over half of the charters granted the power to confer degrees; the power to appoint the president and faculty and the power to prescribe the course or courses of study were granted by approximately one-third of the charters.

The state granted the power to make and alter all by-laws, rules and regulations for the government of the institution more frequently than any other single grant of power. The power to change the by-laws was basic to the internal control activities of a non-public institution. The state provided for one identification activity by granting the power to adopt a corporate seal. External control activity was provided under the state's grant of power for the institution to exercise any right, privilege, or powers granted by the state through the passage of new incorporation acts.

Conclusions. The state, in granting the corporate powers in the charters to non-public institutions, was primarily concerned with the perpetuation of the institution. These powers were basic to the need for the development and future growth of such institutions.

The state grants a non-public college or university extensive powers of self-government through the issuance of a corporate charter. These powers will not be affected by future legislation enacted by the state unless approved by the Board of Trustees.

The Legal Status Revealed in the Decisions of the Courts

The principles of common law were classified under four main areas of administrative responsibility. The categories were (1) public relations and third parties, (2) funds and facilities, (3) president and faculty, and (4) students and programs.

Findings. The major portion of the litigated cases involved persons or agencies outside the immediate non-public college or university campus and was classified for this study under public relations and third parties. Basic to the legal existence of any non-public institution was the corporate charter. It was well-settled law that the charter of a non-public corporation was a legal contract between the state and the corporation or incorporators. Another principle of law followed by the courts was that non-public colleges and universities founded by private enterprise and endowed or supported by private donations were classified by the courts as charitable corporations. Furthermore, the state had the legal authority to reserve the right to amend or revoke the charter of a non-public institution of higher learning if stipulated at the time of the issuance of the charter. In the area of supervision, the right of the state to supervise non-public colleges and universities existed under the general police power of the state and was exercised (a) in the granting of degrees, (b) in the licensing of certain professions, and (c) in establishing rules and regulations relative to building codes and fire regulations.

The decisions of the courts also revealed that requests to erect educational or religious buildings in areas zoned residential were approved. In addition, zoning laws could not discriminate between public and non-public educational institutions. However, zoning laws which prohibited the existence of a college or certain expansion thereof was constitutional "if the zoning ordinance bore a relationship to some impairment of the public safety, health, morals, or general welfare" of the community.

The right of a non-public college or university to exclusive use of its corporate name was upheld by the courts if the commercial enterprise using such name reflected directly upon the non-public institution. The colleges and universities also had the right by law to grant a valid easement across their lands.

The power of eminent domain was a state power which according to the state constitutions could not be abrogated to any non-public college or university. The principle held that lands condemned by power of eminent domain must be utilized for a "public use".

In the case of donated lands, non-public colleges and universities were required to follow the provisions of the state constitution or statutes. Failure to do so could result in the loss of such land. Where a question arose as to the intent of a deceased grantor of a deed of property, the courts were responsible for determining the intent of such grantors.

The doctrine of "charitable immunity" was unsettled; however, the trend was in the direction of holding charitable institutions, including non-public colleges, responsible for their negligent acts. Another principle of law held that the release of records by a non-public college or university was subject to reasonable requests on the part of third parties if compliance was to be upheld by the courts.

The second major heading treating principles of common law was funds and facilities and it dealt primarily with the tax status of non-public institutions. Charters of non-public colleges and universities which provided for tax exemption of all property were upheld by the courts. However, the legislature could not grant any special privilege of tax exemption for non-public institutions if existing legislation prohibited such exemptions. Another point of law held that the change of the original name of an incorporated college or university did not nullify the tax exempt status of such institution.

The home of the president of a college was held tax exempt since it aided the educational purpose of the institution. On the other hand, the tax status of faculty housing was unsettled in the courts. Athletic fields and stadiums were held tax exempt when used strictly for educational purposes.

Restrictions placed upon lands conveyed to a non-public institution of higher learning by a donor in violation of the provisions of the institution's charter were declared void by the courts. Furthermore, the right of a non-public institution of higher learning to purchase condemned lands for purposes of institutional expansion were upheld by the courts.

The right of non-public colleges and universities to a tax exempt status for its commercial properties was unsettled in the courts. However, institution owned parking lots used for purposes of faculty and student parking were held tax exempt if the parking charge was reasonable. In another point of law, fraternity houses were subject to taxation since a fraternal corporation did not meet the requirement of being either an educational or a scientific corporation.

The constitutionality of the appropriation of public funds to non-public colleges and universities remained unsettled. Thirty-three states specifically prohibited the use of state funds in aid of non-public institutions of higher learning, while thirteen other states made no appropriations despite the lack of any specific prohibition. However, the federal government was apparently not so prohibited. Under the general welfare clause, federal funds were channeled directly to non-public institutions within a state during 1965 allegedly without taking on the color of state funds. The first test since 1923 of the constitutionality of the use of state funds for non-public colleges was pending before the United States Supreme Court in a Maryland case. (Horace Mann League of the United States v. Board of Public Works.)

The third major heading was president and faculty. The legal relationship between the institution and the faculty members was a contractual one. Oral contracts provided a questionable basis for claims by faculty members when litigated in the courts. In the area of tenure, the courts did not interfere with the power of the non-public institution to grant tenure to a faculty member unless a violation of adopted policy existed. The principle of law was clear that faculty members on tenure were subject to dismissal only for adequate cause. The right of a college to dismiss a faculty member for just cause when the member refused to testify at a Congressional hearing was upheld by the courts.

The legal question of requiring loyalty oaths from faculty members of non-public colleges and universities constituted a body of unsettled law. The trend was toward rescinding the statutory requirements for such oaths.

Officers of a college were not authorized to bind the college for purchases of real or personal property unless duly authorized by the institution's Board of Trustees through its by-laws. Companies transacting business through college agents were responsible for determining the authority of the agents of a college or university; failure to make such determination prevented the company from seeking recourse through the courts.

The fourth area for the reporting of principles of law included students and programs. The non-public college and university was entitled to admit or refuse to admit any person on the basis of age, sex, lack of educational proficiency, or any other reason so determined by the institution. The right to adopt reasonable rules for the government and management of a non-public college or university, and the right to enforce such rules reasonably and not arbitrarily, was a point of law upheld by the courts. The concept of _in loco parentis_ further permitted the institution to make any reasonable rules and regulations, without interference by the courts, for the government of the students.

Students, upon admission to an institution of higher learning, impliedly promised to submit to and be governed by all the necessary rules and regulations which have been or may be adopted by the officials of the institution. It was well-settled law that the act of matriculation and the payment of the required tuition fees created a contract between the student and the institution. However, the radical views held by a student were just cause for the dismissal or removal of a student from a particular program of preparation in the institution. Finally, the right of a non-public institution of higher learning to determine and enforce requirements necessary for the granting of degrees was upheld by the courts.

Conclusions. The corporate charter forms the legal basis for the operation of the non-public college and university. Both the state and the institution are restricted to the provisions of the charter due to its contractual nature. Supervision of non-public institutions is most often exercised by the state indirectly through its general police powers. The power of eminent domain is a state power seldom granted to non-public institutions since the land must be put to a "public use". The doctrine of "charitable immunity" may no longer be relied upon to protect the non-public college or university from law suits arising out of the negligent acts of the institution or its employees.

Questions in regard to the tax exempt status of non-public college or university facilities seldom arise except for faculty housing and commercial properties owned by the institution. Fraternity houses are not generally tax exempt. The use of federal funds for non-public institutions of higher learning is increasing and may continue to expand since there does not seem to be any prohibition against the federal government from appropriating such funds.

The relationship between the non-public institution and the faculty is a contractual one. All contracts should be in written form since an oral contract is of questionable validity in a court of law. Faculty are required to adhere to state loyalty oath provisions if the state statute includes non-public institutions. The court does not interfere with the right of an institution to dismiss faculty personnel except when written policy is violated.

A non-public institution of higher learning may admit only those persons determined acceptable by the institution's officials. Such institutions may make rules and regulations regarding student behavior without interference by the court. The right of the institution to determine the academic requirements to be met in order for a student to receive a degree is upheld by the courts.

BIBLIOGRAPHY

BIBLIOGRAPHY

A. BOOKS

Atkinson, Carroll, and Eugene T. Maleska. *The Story of Education*. Philadelphia: Chilton Book Company, 1962.

Baskin, Samuel (ed.). *Higher Education: Some Newer Developments*. New York: McGraw-Hill Book Company, 1965.

Blackwell, Thomas Edward. *College Law: A Guide for Administrators*. Washington: American Council on Education, 1961.

Brubacher, John S. *A History of the Problems of Education*. New York: McGraw-Hill Book Company, 1947.

Butts, R. Freeman. *The College Charts Its Course*. New York: McGraw-Hill Book Company, 1939.

_______, and Lawrence A. Cremin. *A History of Education in American Culture*. New York: Holt, Rinehart and Winston, 1953.

Byse, Clark, and Louis Laughlin. *Tenure in American Higher Education: Plans, Practices, and the Law*. Ithaca, New York: Cornell University Press, 1959.

Chambers, M. M. *The Colleges and the Courts, 1936-1940*. Boston: D. B. Updike, The Merrymount Press, 1941.

_______. *The Colleges and the Courts, 1941-1945*. New York City: The Carnegie Foundation for the Advancement of Teaching, 1940.

_______. *The Colleges and the Courts, 1946-1950*. New York: Columbia University Press, 1952.

_______. *The Colleges and the Courts Since 1950*. Danville, Illinois: Interstate Printers and Publishers, 1964.

Cubberley, Ellwood. *Public Education in the United States*. Boston: Houghton Mifflin Company, 1934.

_______. *Readings in Public Education in the United States*. Boston: Houghton Mifflin Company, 1934.

DeYoung, Chris A. *Introduction to American Public Education*. Third edition. New York: McGraw-Hill Book Company, 1955.

Educational Policies Commission. *Higher Education in a Decade of Decision*. Washington: National Education Association of the United States, 1957.

Edwards, Newton, and Herman G. Richey. *The School in the American Social Order*. Boston: Houghton Mifflin Company, 1963.

Elliott, Edward C., and M. M. Chambers. *Charters and Basic Laws of Selected American Universities and Colleges*. New York City: The Carnegie Foundation for the Advancement of Teaching, 1934.

_______, and M. M. Chambers. *The College and the Courts: Judicial Decisions Regarding Institutions of Higher Education in the United States*. Boston: D. B. Updike, The Merrymount Press, 1936.

Fellman, David (ed.). *The Supreme Court and Education*. New York: Bureau of Publications, Columbia University, 1960.

Good, Harry G. *A History of Western Education*. Second edition. New York: The Macmillan Company, 1962.

Gross, Carl H., and Charles C. Chandler. *The History of American Education Through Readings*. Boston: D. C. Heath and Company, 1964.

Higher Education in the Forty-Eight States. A Report to the Governors' Conference. Chicago: The Council of State Governments, 1952.

Hillway, Tyrus (ed.). *American Education: An Introduction Through Readings*. Boston: Houghton Mifflin Company, 1964.

Hofstadter, Richard, and C. DeWitt Hardy. *The Development and Scope of Higher Education in the United States*. New York: Columbia University Press, 1952.

_______, and Walter P. Metzger. *The Development of Academic Freedom in the United States*. New York: Columbia University Press, 1955.

_______, and Wilson Smith (eds.). *American Higher Education*. 2 vols. Chicago: University of Chicago Press, 1961.

Keezer, Dexter (ed.). *Financing Higher Education 1960-70*. New York: McGraw-Hill Book Company, 1959.

Knight, Edgar W. (ed.). *A Documentary History of Education in the South Before 1860*. Vol. IV. Chapel Hill: University of North Carolina Press, 1953.

Meyer, Adolph E. *An Educational History of the Western World*. New York: McGraw-Hill Book Company, 1965.

Reisner, Edward H. (ed.). *Thomas Jefferson and Education in a Republic*. New York: McGraw-Hill Book Company, 1930.

Remmlein, Madeline, and Martha Ware. "School and College Law," *Encyclopedia of Educational Research*. Edited by Chester W. Harris. New York: The Macmillan Company, 1960.

Rudolph, Frederick. The American College and University. New York: Vintage Books, 1962.

Ruml, Beardsley, and Donald H. Morrison. Memo to a College Trustee. New York: McGraw-Hill Book Company, 1959.

Stanford, Nevitt (ed.). The American College. New York: John Wiley and Sons, 1962.

Spurlock, Clark. Education and the Supreme Court. Urbana: University of Illinois Press, 1955.

Stokes, Anson Phelps. Church and State in the United States. 3 vols. New York: Harper and Brothers Publishers, 1950.

Tewksbury, Donald G. The Foundings of American Colleges and Universities Before the Civil War. [n.p.]: Archon Books, 1965.

United States Office of Education. "Education: American Colleges and Universities," The World Almanac and Book of Facts, 1966. Edited by Leeman H. Long. New York: New York World-Telegram and The Sun, 1966. Pp. 705-718.

Woodburne, Lloyd S. Principles of College and University Administration. Stanford, California: Stanford University Press, 1958.

B. PUBLICATIONS OF THE GOVERNMENT, LEARNED SOCIETIES, AND OTHER ORGANIZATIONS

Badger, Henry G. Biennial Survey of Education in the United States. Washington: Government Printing Office, 1961.

Bakken, Clarence. "An Analysis of the Legal Basis for Operating Selected Student Personnel Services in State Tax Supported Four-Year Colleges and Universities in the United States." Unpublished Doctoral dissertation, University of Denver, Denver, 1959.

_______. The Legal Basis for College Student Personnel Work. Student Personnel Series No. 2. Washington: American College Personnel Association, 1961.

Bartlett, L.W. State Control of Private Incorporated Institutions of Higher Education. New York: Teacher's College, Columbia University, 1926.

Beach, Fred, and Robert Will. The State and Non-Public Schools. United States Department of Health, Education and Welfare. Washington: Government Printing Office, 1958.

Brewer, Mary E. "Controls Placed Upon Student Behavior by the Colleges, Court and Legislature." Unpublished Doctoral dissertation, Duke University, Durham, North Carolina, 1958.

Brunner, Kenneth. "Criteria for Evaluating a State's Legislative and Administrative Programs for Community Junior College Education." Unpublished Doctoral dissertation, University of Florida, Gainesville, 1956.

Gacek, Edward. "Private Junior College Legislation in the United States." Unpublished Doctoral dissertation, University of Connecticut, Storrs, 1958.

Hollis, Ernest V., and S. V. Martorana. *Survey of State Legislation Relating to Higher Education*, January 1, 1963, to December 31, 1963. Office of Education, United States Department of Health, Education and Welfare, Circular 748. Washington:Government Printing Office, 1964.

Lachman, Seymour. "The Church-State Issue as Reflected in Federal Aid to Education Bills, 1937-1950." Unpublished Doctoral dissertation, New York University, New York, 1963.

Lentz, John W. "Basic Legal Controls of School District Organization in Colorado." Unpublished Doctoral dissertation, University of Denver, Denver, 1961.

Little, J. Kenneth. *A Survey of Federal Programs in Higher Education*. United States Department of Health, Education and Welfare, Office of Education. Washington: Government Printing Office, 1962.

Loveless, W. A. "Federal Aid and the Church-Operated College." Unpublished Doctoral dissertation, University of Maryland, College Park, 1964.

Mood, A. M. *Opening Fall Enrollment in Higher Education, 1965*. United States Office of Education. Washington: Government Printing Office, 1966.

Nolte, M. Chester. "Doctoral Studies in the Field of School Law 1953-1964." Topeka, Kansas: National Organization on Legal Problems of Education, 1965. (Mimeographed.)

Pittillo, Robert. "Tort Liability of Colleges and Universities." Unpublished Doctoral dissertation, Duke University, Durham, North Carolina, 1961.

Porter, James. "Court Interpretation of Tax Cases Involving Administrative and Faculty Residences in Higher Education." Unpublished Doctoral dissertation, University of Pittsburgh, Pittsburgh, 1962.

Sharpe, Russel T., *et al*. *Financial Assistance for College Students*. Washington: American Council on Education, 1946.

Simon, Kenneth A., and Marie G. Fullman. *Projections of Educational Statistics to 1974-75*. United States Office of Education. Washington: Government Printing Company, 1965.

_______, and W. Vance Grant. *Digest of Educational Statistics*. Bulletin No. 4. Washington: Government Printing Office, 1965.

United States Bureau of the Census. *Historical Statistics of the United States, Colonial Times to 1957*. Continuation to 1962 and Revisions. Washington: Government Printing Office, 1965.

_______. *Statistical Abstract of the United States: 1965*. 86th edition. Washington: Government Printing Office, 1965.

United States Office of Education. *Education Directory, 1964-1965, Part 3, Higher Education*. Washington: Government Printing Office, 1965.

Walker, Paul. "Court Decisions Dealing with Legal Relationships Between American Colleges and Universities and Their Students." Unpublished Doctoral dissertation, University of Southern California, Los Angeles, 1961.

Werkema, Gordon R. "Law and the Non-Public School." Unpublished Doctoral dissertation, University of Denver, Denver, 1964.

C. PERIODICALS

"AAUP Report Finds St. John's Firings 'Grievous and Inexcusable,'" *American Higher Education: College and University Bulletin*, 18:14, May 1, 1966.

"Assuming the Worst," *America*, 108:604-605, April 27, 1963.

Barnard, F. A. P. "Improvements Practicable in American Colleges," *The American Journal of Education*. 1:174-185, January, 1856.

Byse, Clark. "Procedural Due Process and the College Student: Law and Policy." Paper read at the American Council on Education, Washington, October, 1965. *College Student Personnel Abstracts*, 1:97, January, 1966.

"Constitutional Law-Higher Education Facilities Act-Constitutionality of Federal Financial Aid to Church-Related Colleges," *Harvard Law Review*, 77:1353-1360, May, 1964.

The Denver Post, April 18, 1966.

Graber, Lee O. "State May Aid Parochial Schools: Maryland Court," Nations Schools, 75:58, May, 1965.

Gardner, John W. "Agenda for the Colleges and Universities," The Journal of Higher Education, 36:359-365, October, 1965.

"The Goldfish Bowl," America, 108:329, March 9, 1963.

Jacobson, Sol. "The Expulsion of Students and Due Process of Law," Journal of Higher Education, 34:250-255, May, 1963.

_______. "Judicial Review of College-Admission Policies," Journal of Higher Education, 34:432-437, November, 1963.

"Judicial Review of the Tenure Contract of a Professor in a Private College," Ohio State Law Journal, 25:289-298, Spring, 1964.

McIlhenny, Edmund. "Due Process and the 'Private' Institution." Paper read at the American Council on Education, Washington, October, 1965. College Student Personnel Abstracts, 1:98, January, 1966.

McIntosh, Carl. "The Unionization of College and University Teachers," Journal of Higher Education, 36:373-378, October, 1965.

Moore, Raymond S., and David W. Feld. "The Higher Education Facilities Act," Phi Delta Kappan, 46:277-279, February, 1965.

Mudlinger, Donald C. "Due Process and the College Student." Paper read at the American Council on Education, Washington, October, 1965. College Student Personnel Abstracts, 1:98, January, 1966.

Murphy, William P. "Education Freedom in the Courts," A.A.U.P. Bulletin, 49:309-327, Winter, 1963.

Orentlicher, Herman I. "Education in Legislation and the Courts," A.A.U.P. Bulletin, 51:429-436, December, 1965.

Sasscer, Harrison. "Use of Public Funds by Private Institutions of Higher Education," Phi Delta Kappan, 45:242-246, February, 1964.

"Seminary Professors Resign," The Christian Century, 82:101-102, January 27, 1965.

Shad, Patricia P. "Constitutionality of Restricted Scholarships," New York University Law Review 33:604-617, April, 1958.

Shoul, Dennis. "Due Process and the College Student." Paper read at the American Council on Education, Washington, October, 1965. College Student Personnel Abstracts, 1:99, January, 1966.

Strickland, Donald A. "In Loco Parentis--Legal Mots and Student Moral," The Journal of College Student Personnel, 6:335-340, November, 1965.

Stroup, Herbert H. "Freedom and Responsibility in Higher Education: A Study of the Institutional Limitations on Human Freedom," Christian Faith and Higher Education Institute, United Presbyterian Church, U.S.A. College Student Personnel Abstracts, 1:100, January, 1966.

"Student Grants and the Separation of Church and State," Syracuse Law Review, 12:387-394, Spring, 1961.

"University Headaches," America, 108:430-431, March 30, 1963.

Vance, Forrest L. "Confidentiality Interpreted by Professional Judgment and Staff Review," The Personnel and Guidance Journal, 42:254-257, November, 1963.

Winfrey, James K., and Daniel D. Feder. "Non-instructional Services," Review of Educational Research, 35:323-324, October, 1965.

Wollner, Sidney H. "The College Housing Program," Higher Education, 19:3-6+, February, 1963.

Worman, Roy E. "Confidentiality Interpreted by Established Agency Policy," The Personnel and Guidance Journal, 42:257-259, November, 1963.

D. LEGAL LITERATURE

American Digest System. St. Paul: West Publishing Company, continuous to date.

American Jurisprudence 2d. San Francisco: Bancroft-Whitney Company, and New York: The Lawyers Cooperative Publishing Company. Cumulative supplements to date.

15 Am. Jr. 2d, Colleges and Universities.

18 Am. Jr. 2d, Corporations.

Black's Law Dictionary. Fourth edition. St. Paul: West Publishing Company, 1951.

Corpus Juris Secundum. Brooklyn: The American Law Book Company and The West Publishing Company. Cumulative supplements to date.

14 C.J.S., Colleges and Universities.

18 C.J.S., Corporations.

National Reporter System. St. Paul: West Publishing Company, continuous to date.

Tort Liability of Private Schools and Institutions of Higher Learning, 160 A.L.R. 250 *et seq*.

Words and Phrases St. Paul: West Publishing Company. Cumulative to date.

E. RESEARCH AIDS

A Uniform System of Citation: Forms of Citations and Abbreviations. Cambridge, Massachusetts: The Harvard Law Review Association, Gannett House, 1958.

Brickman, William W. *Guide to Research in Educational History*. New York: New York University Bookstore, 1949.

Campbell, William Giles. *Form and Style in Thesis Writing*. Boston: Houghton Mifflin Company, 1954.

Good, Carter, A. S. Barr, and Douglas E. Scates. *The Methodology of Educational Research*. New York: Appleton-Century-Crofts, 1941.

How to Use Shepard's Citations. Colorado Springs, Colorado: Shepard's Citations, Inc., 1964.

Pollack, Erwin H. *Fundamentals of Legal Research*. Second edition. Brooklyn: The Foundation Press, 1962.

Price, Miles O., and Harry Bitner. *Effective Legal Research*. Boston: Little, Brown and Company, 1962.

Rezny, Arthur A., and Madaline Kinter Remmlein. *A Schoolman in the Law Library*. Danville, Illinois: Interstate Printers and Publishers, 1962.

Russell, Mildred (ed.). *The Guide to Legal Periodicals*. New York: The H. W. Wilson Company, 1965.

West's Law Finder. St. Paul: West Publishing Company, 1962.

APPENDIX A

TABLE OF CONSTITUTIONS

Alabama: Constitution of Alabama of 1901

Alaska: Constitution of the State of Alaska, 1959

Arizona: Constitution of the State of Arizona, 1910

Arkansas: Constitution of the State of Arkansas, 1874

California: California Constitution Annotated, 1879

Colorado: Constitution of the State of Colorado, 1876

Connecticut: Constitution of the State of Connecticut, 1955

Delaware: Constitution of the State of Delaware, Adopted 1897

Florida: Constitution of the State of Florida, 1885

Georgia: Constitution of the State of Georgia of 1945

Hawaii: Constitution of the State of Hawaii, 1959

Idaho: Constitution of the State of Idaho, 1890

Illinois: Constitution of Illinois 1870

Indiana: Constitution of State of Indiana, 1851

Iowa: Constitution of Iowa, 1857

Kansas: Constitution of the State of Kansas, 1859

Kentucky: Constitution of Kentucky, 1960

Louisiana: Constitution of Louisiana, 1921

Maine: Constitution of the State of Maine, 1820

Maryland: Constitution of Maryland, 1867

Massachusetts: Constitution of the Commonwealth of Massachusetts, Revised 1919

Michigan: Constitution of the State of Michigan, 1963

Minnesota: Constitution of Minnesota, 1857

Mississippi: Constitution of the State of Mississippi, 1890

TABLE OF CONSTITUTIONS (Continued)

Missouri: Constitution of Missouri, 1945

Montana: Constitution of the State of Montana, 1889

Nebraska: Constitution of the State of Nebraska, 1875

Nevada: Constitution of the State of Nevada, 1864

New Hampshire: Constitution of the State of New Hampshire, 1784

New Jersey: Constitution of the State of New Jersey, 1947

New Mexico: Constitution of the State of New Mexico, 1911

New York: Constitution of the State of New York, 1938

North Carolina: Constitution of North Carolina, 1868

North Dakota: Constitution of North Dakota, 1889

Ohio: Constitution of Ohio, 1851

Oklahoma: Constitution of the State of Oklahoma, 1907

Oregon: Constitution of Oregon, 1859

Pennsylvania: Constitution of the State of Pennsylvania, 1874

Rhode Island: Constitution of the State of Rhode Island and Providence Plantations, 1842

South Carolina: Constitution of the State of South Carolina, 1895

South Dakota: Constitution of South Dakota, 1889

Tennessee: Constitution of Tennessee, 1870

Texas: Constitution of the State of Texas, 1876

Utah: Constitution of Utah, 1896

Vermont: Constitution of the State of Vermont, 1793

Virginia: Constitution of Virginia, 1902

Washington: Constitution of the State of Washington, 1889

TABLE OF CONSTITUTIONS (Continued)

West Virginia: Constitution of West Virginia, 1872

Wisconsin: Constitution of the State of Wisconsin, 1848

Wyoming: Constitution of the State of Wyoming, 1890

APPENDIX B

TABLE OF STATUTES

Alabama: Code of Alabama, Recompiled (1958).

Alaska: Alaska Statutes (1962).

Arizona: Arizona Revised Statutes Annotated.

Arkansas: Arkansas Statutes Annotated (1947).

California: West's Annotated California Code.

Colorado: Colorado Revised Statutes (1963).

Connecticut: Connecticut General Statutes Annotated (1958).

Delaware: Delaware Code (1953).

Florida: Florida Code Annotated (1961).

Georgia: Georgia Code Annotated.

Hawaii: Revised Laws of Hawaii (1963 Supplement).

Idaho: Idaho Code.

Illinois: Smith-Hurd Illinois Annotated (1963).

Indiana: Burn's Indiana Statutes Annotated.

Iowa: Iowa Code Annotated.

Kansas: Kansas Statutes Annotated, Corrick.

Kentucky: Kentucky Revised Statutes.

Louisiana: Louisiana Statutes Annotated, Revised Statutes (1950).

Maine: Revised Statutes Annotated (1964).

Maryland: Annotated Code of the Public Laws of Maryland (1957).

Massachusetts: Massachusetts General Laws Annotated.

Michigan: Michigan Statutes Annotated.

Minnesota: Minnesota Statutes Annotated.

Mississippi: Mississippi Code Annotated (Recompiled 1956).

TABLE OF STATUTES (Continued)

Missouri: Vernon's Annotated Missouri Statutes.

Montana: Revised Codes of Montana (1947).

Nebraska: Reissue Revised Statutes of Nebraska (1943).

Nevada: Nevada Reissue Revised Statutes (1943).

New Hampshire: New Hampshire Revised Statutes Annotated (1955).

New Jersey: New Jersey Statutes Annotated.

New Mexico: New Mexico Statutes Annotated (1953).

New York: McKinney's Consolidated Laws of New York.

North Carolina: General Statutes of North Carolina.

North Dakota: North Dakota Century Code Annotated.

Ohio: Page's Ohio Revised Code Annotated.

Oklahoma: Oklahoma Statutes Annotated.

Oregon: Oregon Revised Statutes (1963 Replacement Parts).

Pennsylvania: Purdon's Pennsylvania Statutes Annotated.

Rhode Island: General Laws of Rhode Island (1956).

South Carolina: Code of Laws of South Carolina (1962).

South Dakota: South Dakota Code of 1939. (Supplement to South Dakota Code of 1939, 1960).

Tennessee: Tennessee Code Annotated.

Texas: Vernon's Texas Annotated Statutes.

Utah: Utah Code Annotated.

Vermont: Vermont Statutes Annotated.

Virginia: Code of Virginia Annotated (1950).

Washington: Revised Code of Washington Annotated.

TABLE OF STATUTES (Continued)

West Virginia: West Virginia Code of 1961, Annotated.

Wisconsin: West's Wisconsin Statutes Annotated.

Wyoming: Wyoming Statutes Annotated (1957).

APPENDIX C

TABLE OF CASES

Almond v. *Day*, 197 Va. 419, 89 S.E.2d 851 (1955).

American University v. *Prentis*, 113 F. Supp. 389 (D.D.C. 1953), *aff'd*, 214 F.2d 282 (D.C. Circ.), *cert. denied*, 348 U.S. 898 (1954).

Anthony v. *Syracuse University*, 224 App. Div. 487, 231 N.Y. Supp. 435 (1928).

Appeal of University of Pittsburgh, 407 Pa. 416, 180 A.2d 760 (1962).

Application of Thomas G. Clarkson Memorial College of Technology, 191 Misc. 621, 77 N.Y.S.2d 182 (Sup. Ct. 1948), *aff'd*, 274 App. Div. 732, 87 N.Y.S.2d 491, *aff'd*, 300 N.Y. 595, 89 N.E.2d 882 (1949).

Atchison, *T.* & *S.F.R. Co.* v. City of Atchison, 47 Kan. 712, 28 Pac. 1000 (1892).

Baltimore University v. *Colton*, 98 Md. 623, 57 Atl. 14 (1904).

Barker v. *Trustees of Bryn Mawr College*, 278 Pa. 121, 122 Atl. 220 (1923).

Barone v. *Adams*, 20 App. Div. 2d 790, 248 N.Y.S.2d 72 (1964), *affirming* 39 Misc. 2d 227, 240 N.Y.S.2d 390 (Sup. Ct. 1963).

Berea College v. *Kentucky*, 211 U.S. 45 (1908).

Berryman v. *Board of Trustees*, 222 U.S. 334 (1912).

Board of Regents of Oklahoma Agricultural Colleges v. *Updegraff*, 205 Okla 301, 237 P.2d 131 (1951), *rev'd sub nom. Wieman* v. *Updegraff* 344 U.S. 183 (1952).

Booker v. *Grand Rapids Medical College*, 156 Mich. 95, 120 N.W. 589 (1909).

Bradford v. *Clifton*, 379 S.W.2d 249 (Ky. 1964).

Bradley v. *New York University*, 124 N.Y.S.2d 238 (Sup. Ct. 1953), *aff'd*, 307 N.Y. 620, 120 N.E.2d 828 (1954).

Chapman v. *Maren Elwood College*, 225 F.2d 230 (9th Cir. 1955).

Church Divinity School v. *County of Alameda*, 152 Cal. App. 2d 496, 314 P.2d 209 (1957).

City and County of Denver v. *Colorado Seminary*, 96 Colo. 109, 41 P.2d 1109 (1934).

TABLE OF CASES (Continued)

City of Hoboken v. *Division of Tax Appeals*, 134 N.J.L. 594, 49 A.2d 587 (1946).

City of Louisville v. *Presbyterian Orphan Home Soc'y*, 299 Ky. 566, 186 S.W.2d 194 (1945).

Collins v. *Kephart*, 271 Pa. 428, 117 Atl. 440 (1921).

Connecticut College for Women v. *Calvert*, 87 Conn. 421, 88 Atl. 633 (1913).

Cornell College v. *Board of Review*, 248 Iowa 388, 81 N.W.2d 25 (1957).

Cornell University v. *Messing Bakeries*, 135 N.Y.S.2d 101 (Sup. Ct. 1954).

Cornell University v. *Messing Bakeries*, 285 App. Div. 490, 138 N.Y.S.2d 280 *aff'd*, 309 N.Y. 722, 138 N.E.2d 421 (1955).

County Comm'rs v. *Colorado Seminary*, 12 Colo. 497 Pac. 490 (1889).

Credit Alliance Corp. v. *Centenary College of Louisiana*, 17 La. App. 368, 136 So. 130 (1930).

Dartmouth College v. *Woodward*, 4 Wheat. 518 (1819).

Davis v. *University of Kansas City*, 129 F. Supp. 716 (W.D. Mo. 1955).

Dehaan v. *Brandeis University*, 150 F. Supp. 626 (D. Mass. 1957).

Denison University v. *Board of Tax Appeals*, 173 Ohio St. 429, 183 N.E.2d 773 (1962).

District of Columbia v. *George Washington University*, 221 F.2d 87 (D.C. Cir. 1955).

Doane College v. *County of Saline*, 173 Neb. 8, 112 N.W.2d 248 (1961).

Edde v. *Columbia University*, 8 Misc. 2d 795, 168 N.Y.S.2d 643 (Sup. Ct. 1957), *aff'd*, 6 App. Div. 2d 780, 175 N.Y.S.2d 556 (1958), *appeal dismissed*, 5 N.Y.2d 881, 182 N.Y.S.2d 829 (1959).

Elfbrandt v. *Russell*, 86 S. Ct. 1238 (1966).

Flagiello v. *Pennsylvania Hospital*, 417 Pa. 486, 208 A.2d 193 (1965).

Frank v. *Marquette University*, 209 Wis. 372, 245 N.W. 125 (1925).

Frothingham v. *Mellon*, 262 U.S. 447 (1923).

TABLE OF CASES (Continued)

Furman University v. *McLeod*, 238 S.C. 475, 120 S.E.2d 865 (1961).

Gott v. *Berea College*, 156 Ky. 376, 161 S.W. 204 (1913).

Guillory v. *Administrators of Tulane University*, 212 F. Supp. 674 (E.D. La), *aff'd*, 306 F.2d 489 (5th Cir. 1962).

Guy v. *Northwest Bible College*, 64 Wash. 2d 116, 390 P.2d 708 (1964).

Hilger v. *Harding College, Inc.*, 231 Ark, 686, 331 S.W.2d 851 (1960).

Hofstra College v. *Wilmerding*, 24 Misc. 2d 248, 204 N.Y.S.2d 476 (Sup. Ct. 1960).

Horace Mann League of the United States v. *Tawes*, Governor, Case No. 15, 850 Eq., Cir. Ct. for Anne Arundel County, Md., March 11, 1965.

In re Opinion of the Justices, 214 Mass, 599, 102 N.E. 464 (1913).

In re Syracuse University, 124 Mis. 788, 209 N.Y. Supp. 329 (Sup. Ct.), *aff'd*, 214 App. Div. 375, 212 N.Y.Supp. 253 (1925).

Institute of the Metropolis, Inc. v. *University of the State of New York*, 159 Misc. 529, 289 N.Y. Supp. 660 (Sup. Ct.), *aff'd*, 249 App. Div. 33, 291 N.Y. Supp. 893 (1936).

John B. Stetson University v. *Hunt*, 88 Fla. 510, 102 So. 637 (1924).

Johns Hopkins University v. *Williams*, 199 Md. 382, 86 A.2d 892 (1952).

Kansas City Power & Light Co. v. *Riss*, 319 S.W.2d 262 (Mo. 1958).

Kelcher v. *La Salle College*, 394 Pa. 545, 147 A.2d 835, *cert. denied*, 361 U.S. 12 (1959).

Kintzele v. *City of St. Louis*, 347 S.W.2d 695 (Mo. 1961).

Koblitz v. *Western Reserve University*, 21 Ohio C.C.R. 144, 11 Ohio Dec. 515 (1901).

Long Island University v. *Tappan*, 202 Misc. 956, 113 N.Y.S.2d 767, *aff'd*, 305 N.Y.893, 114 N.E.2d 432 (1953).

Mississippi College v. *May*, 235 Miss. 200, 108 So. 2d 703 (1959).

Morehouse College v. *Russell*, 109 Ga. App. 301, 136 S.E.2d 179.

TABLE OF CASES (Continued)

Northampton College v. *County of Saline*, 173 Neb. 8, 112 N.W.2d 248 (1961).

Northampton College v. *Lafayette College*, 128 Pa. 132, 18 Atl. 516 (1889).

Nostrand v. *Little*, 58 Wash. 2d 111, 361 P.2d 551 (1961), *appeal dismissed*, 368 U.S. 436 (1962).

Orono v. *Sigma Alpha Epsilon Soc'y*, 105 Me. 214, 74 Atl. 19 (1909).

Pace College v. *Boyland*, 4 N.Y.2d 528, 176 N.Y.S.2d 356, 151 N.E.2d 900 (1958).

Packman v. *Leonard et. al.*, 39 Cal. 2d 676, 249 P.2d 267 (1952).

People v. *Albany Law School*, 198 App. Div. 460, 191 N.Y. Supp. 349 (1921).

People v. *Bennett Medical College*, 248 Ill. 608, 94 N.E.110 (1911).

People v. *Lawler*, 74 App. Div. 553, 77 N.Y. Supp. 840 (1902), *aff'd*, 179 N.Y. 535, 71 N.E. 1136 (1904).

People v. *Northwestern University*, 333 Ill. App. 224, 77 N.E.2d 345, *cert. denied*, 335 U.S. 829 (1948).

People v. *Russell*. 29 Cal. Rptr. 562, 214, C.A.2d, 445 (1963).

Phi Beta Epsilon Corp. v. *City of Boston*, 182 Mass 457, 65 N.E. 824 (1903).

Pratt Institute v. *Boyland*, 16 Misc. 2d 58, 174 N.Y.S.2d 112 (Sup. Ct. 1958), *aff'd*, 8 App. Div. 2d 625, 185 N.Y.S.2d 753 (1959).

President and Directors of Georgetown College v. *Hughes*, 130 F.2d 810 (D.C. Circ. 1942).

Princeton Township v. *Institute for Advanced Study*, 59 N.J. Super. 46, 15 A.2d 136 (1960).

Property Owner's Ass'n. v. *Board of Zoning Appeals*, 2 Misc. 2d 309, 123 N.Y.S.2d 716 (Sup. Ct. 1953).

Pyeatte v. *Board of Regents*, 102 F. Supp. 407 (W.D. Okla 1951), *aff'd without opinion*, 342 U.S. 936 (1952).

Ramsey County v. *Macalester College*, 51 Minn. 437, 53 N.W. 704 (1892).

TABLE OF CASES (Continued)

Rhine v. *International Y.M.C.A. College*, 339 Mass. 610, 162 N.E.2d 56 (1959).

Robinson v. *University of Miami*, 100 So. 2d 442 (Fla. 1958).

St. Vincent College v. *Hallett*, 201 Fed. 471 (7th Circ. 1912).

Schueller v. *Board of Adjustment*, 250 Iowa 706, 95 N.W.2d 731 (1959).

Scott v. *Joint Board of Education*, 258 S.W.2d 449 (Ky. 1953).

Shelton v. *Tucker*, 364 U.S. 479 (1960), reversing *Shelton* v. *McKinley*, 174 F. Supp. 351 (D. Ark. 1959), and *Carr* v. *Young*, 231 Ark. 641, 331 S.W.2d 701 (1960).

64th St. Residences v. *City of New York*, 4 N.Y.2d 268, 174 N.Y.S.2d 1, 150 N.E.2d 396, *cert. denied*, 357 U.S. 907 (1958).

Southeastern Baptist Technological Seminary v. *Wake County*, 251 N.C. 775, 112 S.E.2d 528 (1960).

Southwestern Presbyterian College v. *City of Clarksville*, 149 Tenn. 256, 259 S.W. 550 (1924).

State v. *Milwaukee Medical College*, 128 Wis. 7, 106 N.W. 116 (1906).

State v. *Trustees of William Jewell College*, 364 Mo. 199, 260 S.W.2d 479 (1953).

Tate v. *North Pacific College*, 70 Ore, 160, 140 Pac., 743 (1914).

Thomas v. *Catawba College*, 248 N.C. 609, 104 S.E.2d 175 (1958).

Trinidad v. *Sagrada Orden*, 263 U.S. 578 (1924).

Trustees of Columbia University v. *Axenfield*, 136 Misc. 831, 241 N.Y. Supp. 4 (Sup. Ct. 1930).

Trustees of Eureka College v. *Bondurant*, 289 Ill, 289, 124 N.E. 652 (1919).

Trustees of Rutgers University v. *Piscataway*, 134 N.J.L. 594, 49 A.2d 587 (1946).

University of Southern California v. *Robbins*, 1 Cal. App. 2d 523, 37 P.2d 163 (Ct. App. 1934), *cert. denied*, 295 U.S. 738 (1935).

Vassar College v. *Loose-Wiles Biscuit Co.*, 197 Fed. 982 (W.D. Mo. 1912).

TABLE OF CASES (Continued)

Washington University v. *Bauman*, 341 Mo. 708, 108 S.W.2d 403 (1937).

Woods v. *Simpson*, 146 Md. 547, 126 Atl. 882 (1924).

Yale v. *Benneson*, 147 Conn. 254, 159 A.2d 169 (1960).

APPENDIX D

TABLE OF NON-PUBLIC INSTITUTIONS OF HIGHER LEARNING INCLUDED IN THE ANALYSES OF CHARTERS

Arkansas College	Arkansas
Baker University	Kansas
Beloit College	Wisconsin
Bentley School of Accounting and Finance	Massachusetts
Bethel College and Seminary	Minnesota
Bowdoin College	Maine
Bridgeport Engineering Institute, Inc.	Connecticut
Bradley University	Illinois
Capital University	Ohio
Carleton College	Minnesota
Clark College	Georgia
College of Emporia	Kansas
Colorado Woman's College	Colorado
Concordia Teachers College	Illinois
Creighton University	Nebraska
David Lipscomb College	Tennessee
Dominican College	Wisconsin
Florida Southern College	Florida
Fort Wayne Bible School	Indiana
Hollins College	Virginia
Immaculate Conception Seminary	Missouri
Lakeland College	Wisconsin
LaVerne College	California
Linfield College	Oregon

TABLE OF NON-PUBLIC INSTITUTIONS OF HIGHER LEARNING INCLUDED IN THE ANALYSES OF CHARTERS (Continued)

Marillac College	Missouri
Midwestern Baptist Theological Seminary	Missouri
Mundelein College	Illinois
Nasson College	Maine
Olivet College	Michigan
Regis College for Women	Massachusetts
Rivier College	New Hampshire
Saint Francis College	Pennsylvania
Saint Louis University	Missouri
Seattle Pacific College	Washington
Simpson Bible College	California
St. Joseph College	Connecticut
Temple University	Pennsylvania
Union Theological Seminary	New York
Union Theological Seminary	Virginia
University of Baltimore	Maryland
University of Chicago	Illinois
University of Hartford	Connecticut
University of Portland	Oregon
University of Southern California	California
University of Wooster	Ohio
Villanova University	Pennsylvania
Wheeling College	West Virginia
Wilkes College	Pennsylvania

APPENDIX E

UNIVERSITY OF DENVER University Park
COLORADO SEMINARY
Denver, Colorado 80210
BUREAU OF EDUCATIONAL RESEARCH

270

March 22, 1966

Dr. Leonard M. Elstad
President
Gallaudet College
Washington, D. C. 20002

Dear Dr. Elstad:

A study entitled "Legal Status of the Non-Public College and University in the United States" is being conducted, under the provisions of a grant, in the Bureau of Educational Research. The study includes an analysis of the constitutions, statutes, charters, and decisions of the courts relating specifically to non-public institutions of higher learning.

A significant aspect of the research procedure includes an analysis of the charters of a stratified sample of non-public institutions of higher learning. Your institution has been selected through this sampling process. Would you please forward a copy of the charter, plus any amendments, under which your institution currently operates for purposes of this study.

Thank you for your consideration in this matter. Due to time limitations imposed, an early reply would be greatly appreciated.

Educationally yours,

Francis E. Halstead
Research Assistant

Ralph A. Forsythe
Associate Director

GPP

Enclosure

UNIVERSITY OF DENVER University Park
COLORADO SEMINARY Denver, Colorado 80210
BUREAU OF EDUCATIONAL RESEARCH

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May 23, 1966

Dr. Denis D. Foudy, President
Sulpician Seminary of the Northwest
Kenmore, Washington 98028

Dear Dr. Foudy:

On March 22, 1966, a letter was mailed to you describing the study entitled "Legal Status of the Non-Public College and University in the United States," which is currently being conducted in the Bureau of Educational Research under the provisions of a grant. The purpose of that letter was to obtain a copy of the charter and amendments under which your institution currently operates.

Since an analysis of the charters of non-public institutions founded during the period 1919-1945 is a significant aspect of the study, I am again seeking your assistance in providing us with a copy of your current charter and amendments.

Your cooperation is greatly appreciated.

Educationally yours,

Francis E. Halstead
Research Assistant

FEH:ks

Enclosure

APPENDIX F

CERTIFICATE OF INCORPORATION

OF

COLORADO WOMAN'S COLLEGE SOCIETY

(A Corporation Not for Profit)

KNOW ALL MEN BY THESE PRESENTS: That we, John Doe, John Doe, and John Doe, desiring to form a body politic and corporate (not for profit) under the laws of the State of Colorado, and particularly under Chapter 41, Article 13, C.S.A.'35 as amended, do hereby make, execute, and acknowledge this Certificate of Incorporation in writing and do hereby set forth, declare, and certify as follows;

Article I

Name

The name of the corporation shall be Colorado Woman's College Society.

Article II

Objects, Purposes, and Powers

The objects and purposes for which the said corporation is formed are:

1. To acquire, take over, build, construct, operate, and maintain an institution of learning, located at Denver, Colorado, known as "Colorado Woman's College,"for the education of young women under Christian influence, with authority to confer such degrees and other marks of distinction as are usually conferred and granted by other colleges of like grade.

2. To take, hold, and acquire by gift, devise, purchase, or otherwise, to sell, lease, mortgage, and convey, real property of every kind, nature, and description, and any and all interests therein; to give and take conveyances, leases, mortgages, and deeds of trust upon real property; to dedicate property to public uses; and to construct buildings or other improvements upon its lands, or upon the lands of others.

3. To purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of, the capital stock or any bonds, securities, or evidences of indebtedness created by any other corporation or corporations organized under the laws of this State or any other State, country, nation, or government, and while the owner thereof to exercise all the rights, powers, and privileges of ownership.

4. To borrow, from time to time, such money as may be determined by its Board of Trustees to be necessary or expedient for use for corporate purposes, to evidence any such borrowing by notes bonds, debentures, or other evidences of indebtedness, and to secure the payment of the same by conveyance in trust, mortgage, or pledge of all or any of the real or personal property or revenues of the corporation.

5. To supplant and to succeed to all of the rights, privileges, and immunities, and to become the owner of all of the property and assets, of whatever description and wheresoever located, and to assume all of the debts, contracts, and liabilities of the corporation known as "The Colorado Woman's College Society" created a body politic and corporate by the filing of the Affidavit of Victor A. Elliott in the office of the Secretary of State of the State of Colorado as Filing No. 9058 on the 14th day of November, 1888, as amended by the Affidavit of Victor A. Elliott filing in the office of the Secretary of State of the State of Colorado as Filing No. 9700 on the 9th day of July, 1889.

6. Without in any particular limiting any of the objects, purposes, and powers of the corporation, it is hereby expressly declared and provided that the corporation shall have power to issue obligations of every kind and character in payment for property purchased or for any other object in or about its business; to mortgage or pledge any stocks, bonds, or other

obligations or any real estate or any interest therein or other property which may be acquired by it; to secure any notes, bonds, debentures, or other obligations by it issued or incurred; to guarantee any bonds or contracts or other obligations; to make and perform contracts of every kind and description in furthering its purposes and objects; and, in attaining or furthering any of its purposes and objects, to do any and all other acts and things and to exercise any and all other powers which are now or hereafter may be authorized by law.

7. In general, to carry on any other business in connection with the foregoing, and to have and exercise all the powers conferred by the laws of Colorado upon corporations formed under the Act hereinabove referred to, and to do any and all things hereinbefore set forth, to the same extent as natural persons might or could do.

8. The foregoing clauses shall be contrued both as objects and powers, and it is hereby expressly provided that the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the powers granted or permitted this corporation by law.

Article III

Existence

This corporation shall exist in perpetuity from and after the date of filing this Certificate of Incorporation with the Secretary of State of the State of Colorado, unless sooner dissolved or disincorporated according to law.

Article IV

Members

There shall be two kinds or classes of members of this corporation:

1. Active Members. Active Members shall be the same persons as the Trustees for the time being of the corporation. Active Members shall be elected or appointed as may be provided in the Bylaws and shall have such rights and privileges as may be provided therein.

2. Honorary Members. Honorary Members shall be appointed by the Board of Trustees and shall be persons who have signally served the corporation or Colorado Woman's College and who have merited, by their devotion to Colorado Woman's College or this corporation, the bestowal of honored recognition.

Article V

Trustees

The business and affairs of this corporation shall be managed by a Board of twenty-eight Trustees; and the following persons, to wit:

(Names of the twenty-eight trustees)

are hereby names and designated as such Trustees to manage the affairs of this corporation for the first year of its existence and until their successors are elected and qualify. The President of Colorado Woman's College shall be a Trustee ex officio. The other Trustees shall serve for terms of three years, except that the first Trustees shall have their terms so arranged that the terms of nine members shall expire each year.

Article VI

Bylaws

The Board of Trustees of the corporation shall have power to adopt such prudential Bylaws as may be deemed necessary to govern the business and affairs of the corporation and to amend, alter, or repeal the same.

IN TESTIMONY WHEREOF, the above names incorporators have hereunto set their hands and seals this 5 day of April, 1951.

/s/ John Doe (SEAL)

/s/ John Doe (SEAL)

/s/ John Doe (SEAL)

STATE OF COLORADO)
) ss.
CITY AND COUNTY OF DENVER)

The foregoing instrument was separately and severally acknowledged before me this 5 day of April, 1951, by John Doe, John Doe, and John Doe.

My commission expires March 28, 1954.

Witness my hand and official seal.

(SEAL) /s/ J. Smith
Notary Public

THE LEGAL STATUS OF THE NON-PUBLIC COLLEGE AND UNIVERSITY IN THE UNITED STATES

An Abstract of a Dissertation
Presented to
The Faculty of the Graduate School of Arts and Sciences
University of Denver

In Partial Fulfillment
of the Requirements for the Degree
Doctor of Education

by
Francis E. Halstead
August 1966

ABSTRACT

The purpose of this study was to determine the legal status of the non-public college and university in the United States. A non-public institution of higher learning was considered for purposes of this study as an institution which offered a minimum of a four-year program leading to a bachelor's degree or its equivalent and whose property was not owned by a governmental unit. A search of the literature in the history of higher education, the constitutions and statutes of the fifty states, the court records applicable to non-public institutions of higher learning, and a 5 per cent stratified sample of the charters of non-public institutions included in the study provided the data for the determination of the legal status of the non-public college and university in the United States as of January 1, 1966.

The study of the historical-legal development of non-public colleges and universities revealed areas directly and indirectly related to the problem of the study. The primary subject areas included the corporate charter, student discipline, academic freedom and loyalty oaths, and church-state relationships as reflected in state and federal aid.

The study of the constitutions of the fifty states revealed a total of 228 provisions related to non-public institutions of higher learning. Two-thirds of the provisions pertained to corporations in general and one-third pertained strictly to educational institutions. The constitutional provisions were primarily related to the general

rights and liabilities of all corporations, the tax-exempt status of non-profit educational corporations, and the prohibition of any public funds or property to non-public educational institutions.

The study of the statutes of the fifty states revealed 387 provisions related to non-public institutions of higher learning. Twenty-four states incorporated non-public institutions under the general non-profit corporation acts, while twenty-six states provided for such incorporation under specific educational corporation acts. The general educational provisions pertinent to non-public colleges and universities included the power to confer degrees, courses required of students as prerequisites for graduation, tax exemption of real and personal property, loyalty oath requirement for faculty members, state scholarship and loan programs for students, restriction on hazing by students, loan agreements signed by students classified as minors, limitation on use of pure, grain alcohol, and exemption of officers of institutions of higher learning from jury duty.

The charters of a stratified sample of non-public institutions were analyzed according to four chronological periods of history. A total of seventeen powers were identified. These powers were tabulated according to the frequency contained in the forty-eight charters studied. The study further revealed that a non-public institution of higher learning tended to keep its charter updated by reincorporation under a more recent corporation act or by amendment.

The study of the decisions of the courts revealed over two-hundred cases related to non-public colleges and universities. A total of 113 cases were included in the study under four administrative categories. Under the heading of public relations and third parties, the principles of law such as the corporate rights and responsibilities of non-public institutions, the state's right to supervise non-public institutions through the exercise of its general police powers, and the applicability of the doctrine of "charitable immunity" were reported. The category of funds and facilities treated the points of law related primarily to tax exemption and state and federal aid. The third category, the president and faculty, focused primarily upon contracts, tenure, dismissal, and loyalty oaths. The final category reported under the heading of students and programs included points of law pertinent to the contractual relationship between the student and the non-public college or university, the concept of _in loco parentis_ and the institution's right to establish rules and regulations over student behavior, and the rights and liabilities of a non-public institution of higher learning in admitting, dismissing, or conferring degrees upon students.